115-469

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.

No. ~~322~~ 56

THE ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY, PLAINTIFF IN ERROR,

vs.

HUGH McGEE.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MISSOURI.

FILED OCTOBER 7, 1882.

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INDEX.

	Original.	Print.
Citation	1	1
Proof of service	2	1
Writ of error	3	1
Return to writ	4	2
Caption	5	2
Transcript from circuit court of Stoddard Co.	6	2
Caption	6	2
Petition	6	3
Summons	7	3
Sheriff's return	8	4
Amended answer	9	4
Replication	11	5
Submission	12	6
Judgment	12	6
Motion for new trial	13	7
Order overruling motion for new trial	14	7
Motion in arrest of judgment	15	8
Order overruling motion in arrest of judgment	16	9
Order allowing appeal, &c.	16	9
Affidavit on appeal	17	9
Bond on appeal	18	10

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	Original.	Print.
Bill of exceptions	19	10
Deed of State of Mo. to Joseph C. Reed *et al.*, January 7, 1867	19	10
Notice of sale by Commissioners	22	12
Proof of publication	23	12
Deed of Joseph C. Reed *et al.* to Thomas Allen, January 12, 1867	26	14
Articles of incorporation of Cairo, Arkansas & Texas R. R. Co.	34	19
Agreement of consolidation of St. L., I. M. & S. R. R. Co. with C. A. & T. R. R. Co.	47	25
Agreement of consolidation of St. L., I. M. & S. R. R. Co. with C. and F. R. R. Co.	52	28
Agreed statement of facts	68	36
Deed from Cairo & Fulton R. R. Co. to Hugh McGee, Jan'y 3, 1859	70	37
Motion for new trial	72	38
Motion in arrest of judgment	72	38
Clerk's certificate	74	40
Cause submitted	75	40
Judgment	75	40
Opinion	77	41
Appeal bond	81	43
Clerk's certificate	83	43
Map	84	44

1 The United States of America to Hugh McGee, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington, D. C., on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Missouri, wherein The Saint Louis, Iron Mountain and Southern Railway Company, plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Thomas A. Sherwood, chief justice of the supreme court of the State of Missouri, this tenth day of June, in the year of our Lord one thousand eight hundred and eighty-two.

T. A. SHERWOOD, *C. J. S. Mo.*

2 UNITED STATES OF AMERICA, } ss:
Western District of Missouri, }

I hereby acknowledge due service of the within citation this 14th day of June, A. D. 1882.

H. H. BEDFORD,
Attorney for Defendant in Error.

Witness:
GEO. HOUCK.

(Endorsed:) United States — court, western district of Missouri. St. L., I. M. & S. R'y Co., *vs.* Hugh McGee. Citation. Filed June 17th, 1882. Henry W. Ewing, clerk, by E. B. Ewing, D. C.

3 UNITED STATES OF AMERICA, *ss:*

[SEAL.] The President of the United States to the honorable the judges of the supreme court of the State of Missouri, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court before you at the April term, 1882, thereof, between The St. Louis, Iron Mountain and Southern Railway Company, plaintiff, and Hugh McGee, defendant, a manifest error hath happened, to the great damage of the said plaintiff, as by its complaint appears:

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States together with this writ, so that you have the same at Washington, D. C., on the second Monday of October next, in the said Supreme Court to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that

error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 7th day of June, in the year of our Lord one thousand eight hundred and eighty-two.

Issued at office in the city of Jefferson with the seal of the circuit court of the United States for the western district of Missouri, eastern division, dated as aforesaid.

H. C. GEISBERG,
Clerk Circuit Court United States, Western District of Missouri.

Allowed by—
T. A. SHERWOOD, *C. J. S. Mo.*

4 *Return to Writ.*

STATE OF MISSOURI, *ss:*

In obedience to the command of the within writ, I herewith transmit to the Supreme Court of the United States a duly certified transcript of the record and proceedings in the within entitled case together with all things concerning the same.

In witness whereof, I hereto subscribe my name and affix the seal of said supreme court, at the city of Jefferson, this 19th day of August, A. D. 1882.

[SEAL.] HENRY W. EWING, *Clerk*,
By E. B. EWING, *D. C.*

(Endorsed:) No. —. United States circuit court, western district of Missouri. St. L., I. M. & S. R'y Co. *vs.* Hugh McGee. Writ of error to the Supreme Court of the United States. Returned and filed — day of ——, 18—. Filed June 12, 1882. Henry W. Ewing, cl'k, by E. B. Ewing, D. C.

5 STATE OF MISSOURI, *ss:*

Be it remembered that heretofore, to wit, on the 21st day of February, 1878, a transcript was filed in the office of the clerk of the supreme court of the State of Missouri, which is in the words and figures following, to wit:

6 Record of the pleas, proceedings, orders, judgments, and decrees of the circuit court within and for the county of Stoddard, and State of Missouri, in the twenty-third judicial circuit, began and held at the court-house in the town of Bloomfield, in said county, on the 1st Monday in September, 1877, (being the 3d day of September, 1877,) before the Honorable Reuben P. Owen, judge of the circuit courts for the circuit aforesaid.

Petition Filed.

Be it remembered that on the 8th day of May, 1877, there was filed in the office of the clerk of the circuit court a petition, wherein The St. Louis, Iron Mountain and Southern Railway Company was

plaintiff and Hugh McGee was defendant, and which petition was in words and figures following, viz:

Petition.

Civil Action in the Circuit Court of Stoddard County, Missouri, to the September, A. D. 1877.

THE ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY, a Corporation, Plaintiff,

vs.

HUGH MCGEE, Defendant.

Plaintiff states that the plaintiff is a corporation duly incorporated by the laws of the State of Missouri; that on the first day of January, A. D. 1875, plaintiff was entitled to the possession of the following-described premises, situated in the county of Stoddard and State aforesaid, and described as follows, to wit: The north half of
7 northeast quarter of section seventeen, township twenty-six (26), range eleven (11); and being so entitled to the possession thereof, that the defendant afterwards, to wit, on the second day of January, A. D. 1875, entered into said premises, and unlawfully withholds from the plaintiff the possession thereof, to the damage of plaintiff in the sum of one hundred dollars; that the monthly value of the rents and profits of said premises is fifty dollars. Plaintiff prays judgment for the recovery of said premises, and one hundred dollars damages for the unlawful withholding of the same from plaintiff, and fifty dollars for monthly rents and profits from the rendition of judgment until the possession of the premises is delivered to plaintiff, and for other proper relief.

G. N. BROUGHTON,
Attorney for Plaintiff.

And endorsed as follows: St. Louis, Iron Mountain and Southern Railway Company, plaintiff, against Hugh McGee, defendant. Petition of plaintiff. Filed May 8th, 1877. G. H. Harvey, clerk. Filed by G. N. Broughton, attorney for plaintiff.

And upon which petition a summons issued, which is in words and figures as follows, to wit:

Summons.

STATE OF MISSOURI, } *ss:*
County of Stoddard, }

In the Circuit Court.

The State of Missouri to the sheriff of Stoddard county, Greeting:

8 We command you to summons Hugh McGee, if he be found in your county, to appear before our circuit court, to be holden within and for the county of Stoddard, at the court-house, in the town of Bloomfield, in said county, on the first day of the next term

thereof, to be begun and held on the 1st Monday in September next, A. D. 1877, then and there before the judge of our said court to answer the petition of the St. Louis, Iron Mountain and Southern Railway Company, and have you then and there this writ, with the return of your action thereupon.

Witness my hand as clerk of our said court, and the seal thereof.

Done at office, in Bloomfield, in the county aforesaid, on the 8th day of May, A. D. 1877.

[SEAL.] GILES J. HARVEY, *Cl'k.*

Endorsed: No. 1016. Summons. Stoddard circuit court. September term, 1877. The St. L., I. M. & S. Railway Company *vs.* Hugh McGee. Filed May 8th, 1877. G. J. Harvey, clerk. G. N. Broughton, pl'ff's att'y. Clerk's fee, $2.70.

Upon which summons the sheriff made the following return:

Sheriff's Return.

Executed the within writ in the county of Stoddard, on the 16th day of June, A. D. 1877, by delivering a copy of the within petition and writ to the within-named Hugh McGee.

Fee, $1.00. COLLIN MORGAN,
Sheriff Stoddard Co., Mo.

9 And afterwards, to wit, on the 22 day of March, 1878, the following proceedings were had in said cause, to wit:

Amended Answer Filed.

Stoddard County Circuit Court. March Term, 1878.

FRIDAY, *March 22nd*, 1878—16th day of the Term.

THE ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY, Plaintiff,
against
HUGH MCGEE, Defendant. } C. A. in Ejectment.

Now comes the defendant, by his attorney, and files his amended petition.

Which said amended answer is in words and figures to wit:

Amended Answer.

In Stoddard Circuit Court. March Term, A. D. 1878.

THE ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY,
Plaintiff,
against
HUGH MCGEE, Defendant.

Defendant, for answer to the petition of plaintiff herein, states that he has no knowledge or information sufficient to enable him to form a belief as to whether plaintiff is a corporation duly incorpo-

rated under the laws of the State of Missouri or not. Denies that plaintiff was, on the first day of January, A. D. 1875, or at any other time, was entitled to the possession of the premises mentioned and set forth in plaintiff's petition herein. Denies that this defendant entered in the possession of said premises, as stated in plaintiff's petition, and denies that defendant unlawfully withholds from plaintiff the possession thereof. Denies that plaintiff is damaged in the sum of one hundred dollars, or any other sum, by any act of defendant. Denies that the monthly rents and profits of said premises is fifty dollars. Denies that plaintiff is damaged in any sum whatever by defendant's withholding the possession of said premises from plaintiff.

Defendant further states that he holds the possession of said premises by virtue of a purchase evidenced by a good and sufficient deed of conveyance, executed by the trustees of the Cairo and Fulton Railroad Company of Missouri, on or about the 3rd day of January, 1859. That said deed conveying title to said premises to this defendant has been a matter of record in the office of the clerk of the circuit court of Stoddard county, State of Missouri, since January 10th, A. D. 1859.

Defendant further states that said plaintiff is estop-ed from claiming title to said premises; that if said plaintiff- claim is good for anything it should have been asserted many years ago, as plaintiff has made lasting and valuable improvements in said premises since his occupancy thereof; that defendant's claim to said real estate under said deed of conveyance has been accompanied by actual, open, and notorious and uninterrupted possession for over ten years immediately prior to the institution of this said suit, and that by virtue thereof he is entitled to the same.

BEDFOR-,
For Defendant.

(Endorsed:) 1016. St. Louis & I. M. R. R. *vs.* Hugh McGee. Amended answer. Filed M'ch 22d, 1878. G. J. Harvey, clerk. H. H. Bedford, for def't.

To which amended answer for defendants the plaintiff did not file a replication; but, on the 14th day of March, 1878, the plaintiff, by attorney, filed a replication to defendant's first answer, which order of filing is as follows, to wit:

Replication Filed.

Stoddard County Circuit Court. March Term, 1878.

THURSDAY, *March 14th*, 1878—10th day of the Term.

THE ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY, Plaintiff,
against
HUGH MCGEE, Defendant.
} C. A. in Eject.

Now comes the plaintiff, by its attorney, and files its replication to the defendant's answer.

Which replication is in words and figure following, viz:

Replication.

STATE OF MISSOURI, *County of Stoddard:*

In the Circuit Court of said County.

ST. L., I. M. & S. R'Y CO., Pl'ff, *vs.* HUGH MCGEE, Def't.

Now comes the plaintiff and, for replication to defendant's answer, denies each and every allegation set up and pleaded therein.

BOUGHTON,
Att'y for Pl'ff.

(Endorsed:) No. 1016. St. L., I. M. & S. R'y Co. *vs.* Hugh
12 McGee. Replication. Filed M'ch 14th, 1878. G. J. Harvey, clerk. Boughton, att'y for pl'ff.

Cause Submitted.

And afterwards, to wit, on the 25th day of March, A. D. 1878, the following proceedings were had in said cause, to wit:

Stoddard County Circuit Court, March Term, 1878.

MONDAY, *March 25th*, 1878—18th day of the Term.

THE ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY, Plaintiff, *against* HUGH MCGEE, Defendant. } C. A. in Ejectment.

The parties, by their attorneys, appear and announce themselves ready for trial, and neither party requiring a jury, this cause is submitted to the court upon the pleadings and the testimony introduced; and the court not being sufficiently advised of the same, this cause is continued under advisement.

And afterwards, to wit, on the 9th day of September, 1878, the following proceedings were had in said cause, to wit:

Judgment.

Stoddard County Circuit Court. September Term, 1878.

MONDAY, *September 9th*, 1878—7th day of the Term.

THE ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY, Plaintiff, *against* HUGH MCGEE, Defendant. } C. A. in Ejectment.

Now come the parties, by their attorneys; and this cause having been submitted to the court without a jury at the last term of this

court, upon the pleadings and the testimony introduced, from
13 which the court doth find that the defendant is guilty of the trespass and the ejectment in the petition alledged, and that the plaintiff hath sustained damage by reason of said ejectment in the sum of one cent: It is therefore considered and adjudged by the court that the plaintiff recover of and from the defendant the possession of the lands described in plaintiff's petition, to wit, the north half of the northeast quarter of section seventeen, township twenty-six, range eleven, together with one cent damages aforesaid, together with the costs and charges in his behalf expended, and that execution issue therefor; and that if the possession of said premises be net delivered to plaintiff, that an execution issue to restore the possession of said premises to the plaintiff.

And afterwards, to wit, on the 12th day of September, 1878, the following other proceedings were had in said cause, to wit:

Motion for a New Trial Filed.

Stoddard County Circuit Court. September Term, 1878.

THURSDAY, *September 12th*, 1878—10th day of the Term.

THE ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY, Pl'ff, *against* HUGH MCGEE, Def't. } C. A. in Ejectment.

Now comes the defendant, by his attorney, and files his motion for a new trial.

14 Which said motion for a new trial is in words and figures following:

In the Stoddard — Circuit Court. September —, A. D. 1878.

ST. LOUIS IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY.

vs.

HUGH MCGEE, Defendant.

Now at this time comes the defendant by his counsel and files this his motion for a new trial herein, and states that:

1st. That the verdict herein is against the evidence.

2nd. The verdict is against the issues of the pleadings herein.

3rd. The judgment is against the law arising from the facts in the case.

KITCHEN, BEDFORD *et al., For Deft.*

(Endorsed:) St. Louis, I. M. & Southern R'way Company *vs.* Hugh McGee. Motion for new trial. Filed September 12th, 1878. G. J. Harvey, clerk, by Bedford.

And afterwards, to wit, on the 13th day of September, A. D. 1878, the following other proceedings were had in said cause, to wit:

Motion for a New Trial Overruled, and Motion in Arrest Filed.

Stoddard County Circuit Court. September Term, 1878.

FRIDAY, *September 13th*, 1878—11th day of the term.

THE ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY, Plaintiff,
against
HUGH MCGEE, Defendant.
} C. A. in Ejectment.

Now come the parties, by their attorneys; and the court being fully advised of the motion for a new trial heretofore filed herein, doth consider that the same be overruled; to which ruling and decision of the court the defendant, by his attorney, excepts, and now
15 files his motion in arrest of judgment herein.

Which motion in arrest of judgment is in words and figures following, viz:

Motion in Arrest.

In the Stoddard — Circuit Court. September Term, A. D. 1878.

THE ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY
Plaintiff,
vs.
HUGH MCGEE, Defendant.

Defendant comes and by his counsel herein moves the court to arrest the judgment herein for the following reasons, to wit:

1st. The court erred in the admission of the deed from the State of Missouri to McKay, Reed & Co. in evidence, without showing title in the State of Missouri.

2nd. The court erred in the admission of the deed from McKay, Reed & Co. to Allen.

3rd. The court erred in finding for the plaintiff when he had failed to make out a case.

4th. The plaintiff by its pleadings and evidence has failed to show itself entitled even *prima facie* to a judgment herein.

5th. The pleadings herein show that since the plaintiff claimed to have purchased the Cairo and Fulton R. R. and appurtenances, this defendant has used and occupied said real estate, claiming it as his own exclusive property more than ten years before the institution of this suit.

6th. The finding of the court is against the law and evidence herein.

7th. The facts in the ease does not sustain the judgment.

8th. The plaintiff is entitled to no legal inference in *his* favor, but must stand upon the case made by the testimony.

16 9th. The defendant's ten years' occupancy under color of title prior to the institution of this suit was a better title than the one made by plaintiff.

BEDFORD *et al.*, *For Def't.*

(Endorsed:) St. Louis, Iron Mountain & Southern Railway Com-

pany *vs.* Hugh McKee. Motion in arrest. Filed Sept. 13th, 1878. G. J. Harvey, clerk, by Bedford.

And afterwards, to wit, on the 18th day of September, A. D. 1878, the following other proceedings were had in said cause, to wit:

Motion in Arrest Overruled. Affidavit and Bond Filed and Appeal Granted, & Bill of Exceptions Filed.

Stoddard County Circuit Court. September Term, 1878.

WEDNESDAY, *September* 18*th*, 1878—12th day of the Term.

THE ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY, Plaintiff,
against
HUGH MCGEE, Defendant. } C. A. in Ejectment.

The parties by their attorneys appear, and the court being sufficiently advised of the motion in arrest of judgment heretofore filed herein, doth consider and order that the same be overruled; to which ruling and decision of the court the defendant, by his attorney, excepts, and now the defendant presents to the court his affidavit and bond for an appeal herein to the Supreme Court, and the court being advised of the sufficiency of said affidavit and bond, doth order that an appeal be granted to defendant in this cause to the said Supreme Court; that the clerk of this court make out a full, true, complete, and perfect transcript of the record and proceedings
17 herein, and transmit the same duly certified to the clerk of the Supreme Court, with all convenient speed; and the court doth further order that a stay of execution be granted the defendant herein until a decision of the Supreme Court can be had in the premises. And now comes the defendant by his attorney, and tenders to the court his bill of exceptions herein, which is signed and sealed by the court, ordered filed, and made part of the record herein.

Which affidavit is in words and figures following, to wit:

Affidavit.

In the Stoddard County Circuit Court. September Term, A. D. 1878.

ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY, Plaintiff,
against
HUGH MCGEE, Defendant.

Hugh McGee, the defendant in the above-entitled cause being sworn, upon his oath says that the appeal prayed for by him is not made for vexation or delay, but because he considers himself aggrieved by the judgment and decision of the court.

HUGHY McGEE.

Sworn to and subscribed in open court, this 18th day of September, A. D. 1878.

R. P. OWEN, *Judge.*

(Endorsed:) St. L., I. M. & S. R'y Co. *vs.* Hugh McGee. Affidavit for appeal. Filed Sept. 18, 1878. G. J. Harvey, clerk.

And which said bond is in words and figures, to wit:

18 *Bond.*

In the Circuit Court of Stoddard County, Missouri. September Term, A. D. 1878.

ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILROAD COMPANY, Plaintiff,
against
HUGH MCGEE, Defendant.

We, the undersigned, acknowledge ourselves indebted to the St. Louis, Iron Mountain and Southern Railroad Company in the sum of two hundred dollars, to be void upon this condition: Whereas Hugh McGee has appealed from the judgment of the circuit court of Stoddard county, Missouri, in an action between the St. Louis, Iron Mountain and Southern Railroad, plaintiff, and Hugh McGee, defendant: Now, if on such appeal the said Hugh McGee shall prosecute his appeal with due diligence to a decision in the supreme court, and shall perform such judgment as shall be given by the supreme court, or such as the supreme court may direct the circuit court to give, and if the judgment of such court or any part thereof be affirmed, that he will comply with and perform the same so far as it may be affirmed, and will pay all costs and damages which may be awarded against the appellant by the supreme court, this recognizance shall be void.

HUGH McGEE. [SEAL.]
HENRY H. BEDFORD. [SEAL.]
GEORGE HOUCK. [SEAL.]

Endorsed: St. L., I. M. & S. R'y Co. *vs.* Hugh McGee. Filed Sept. 18th, 1878. G. J. Harvey, clerk.

And which bill of exceptions is in words and figures following, to wit:

Bill of Exceptions.

19 In the Circuit Court of Stoddard County, Missouri. Sept. Term, 1878.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY
vs.
HUGH MCGEE, Defendant.

When this cause came on to be heard upon the petition, amended answer, and replication, and the testimony as follows:

1st. Plaintiff introduced a patent from the United States to the plaintiff, dated January 23d, 1877.

2nd. The plaintiff then introduced and offered a deed from the State of Missouri to McKay, Reed & Co., which said deed is in words and figures following, to wit:

Deed from State by Gov. to Reed et al.

This deed, made and entered into this seventh day of January, A. D. eighteen hundred and sixty-seven, by and between the State of Missouri, acting by its Governor, Thomas C. Fletcher, party of the first part, and Joseph C. Reed, Andrew J. McKay, John C. Vogel, Samuel Simmons, parties of the second, witnesseth: That whereas the said parties of the second part, on their own behalf, and on behalf of others who are or may become associated with them in the completion of the Cairo and Fulton railroad of Missouri, and in the operation, control, and extension thereof, and of the property hereby conveyed to them, said parties of the second part have purchased said Cairo & Fulton railroad of Missouri, and all the rolling-stock, engines, depot houses, machine shops, machinery, utensils, franchises, rights, and privileges, choses in action, and other property, real, personal, or mixed, pertaining thereto on the first day of
20 October, A. D. 1866, except so much of the lands thereof as were exempted from sale by the terms of the act of the General Assemby of said State of Missouri, approved February 19th, A. D. 1866, and hereafter referred to; and whereas said railroad and other property was sold to the said State on said 1st day of October, A. D. 1866, under and by virtue of said act of the General Assembly of said State, which is entitled "An act to provide for the sale of certain railroads and property by the Governor to foreclose the State's lien therein and to secure an early completion of the Southwest Branch Pacific, the Platte county, the St. Louis and Iron Mountain, and the Cairo & Fulton railroads of Missouri," approved February 19th, A. D. 1866, and under and by virtue of said act of the General Assembly supplementary to and amendatory thereof; and whereas said parties of the second part were the highest and best bidders for said railroad and its appurtenances, franchises, and property above-described, and have made their said purchase in compliance with all of the requirements of said act and according to the terms of the advertisement hereto annexed from the commissioner as appointed and qualified hereunder:

Now, therefore, the said party of the first part, acting by its said Governor, in consideration of the premises and of the sum of three hundred and fifty thousand dollars paid and secured to be paid
21 by it, the said party of the first part, by said parties of the second part, does hereby grant, bargain and sell, convey, assign, transfer, and set over unto the said party of the second part, as joint tenants and not as tenants in common, and to their legal representatives, the said Cairo and Fulton railroad of Missouri, with all the franchise, privileges, rights, title, and interest appertaining to said road and all roads, road-bed, rolling-stock, machine shops, and all other property, both real and personal, of every description, belonging or in anywise appertaining thereto, subject to all the conditions of the said act of February 19th, A. D. 1866, and to the exceptions above referred to, to have and to hold the same unto the

said parties of the second part as joint tenants and not as tenants in common and to their legal representatives forever, subject to the obligations, covenants, undertakings, and liabilities of said parties of the second part expressed in their contract with said commissioners, dated November 15th, A. D. 1866, approved by the Governor and filed in the office of the Secretary of State as required by the said act of the General Assembly.

In witness whereof, the said State of Missouri, by Thomas C. Fletcher, Governor thereof, has executed these presents and caused the great seal of State, with the attestation of the Secretary of State to be hereto affixed, the day and year first above written.

22 THOMAS C. FLETCHER, [SEAL.]
Governor of Missouri.

By the Governor:
FRANCIS RODMAN,
Secretary of State.

STATE OF MISSOURI, *County of Cole, City of Jefferson:*

Be it remembered that on the 9th day of January, A. D. 1867, personally appeared before me, the undersigned, a notary public within and for the county of Cole, Thomas C. Fletcher, Governor of the State of Missouri, who is personally known to me to be the same person who has subscribed the foregoing instrument of writing, and acknowledged that he executed the same as the act and deed of said State of Missouri, for the use and purposes therein mentioned.

In witness whereof, I have hereunto set my hand and official seal, at office, the day and year aforesaid.

[L. S.] GEO. J. WEBEXON,
Notary Public.

Notice of Comm'rs.

Sale of Cairo and Fulton railroad of Missouri by commissioners.

The undersigned, who have heretofore given notice of their appointment as commissioners, and their authority to take possession of, or to buy in, said Cairo & Fulton railroad of Missouri, together with the lands belonging thereto, and again to sell the same, do hereby invite proposals in writing for the purchase of said railroad and its lands, rolling-stock, and appurtenances, in case the undersigned should buy in the same at the sale thereof, as advertised by the Governor of Missouri, to take place on the first day of Oc-

23 tober, 1866, bids will be received until November 8th, 1866.

CHAS. L. RANKIN,
BERNARD G. FARRAR,
RUDOLPH WEBER,
Commissioners.

STATE OF MISSOURI, } ss:
County of St. Louis, }

Personally appeared before the undersigned, a justice of the peace within and for the county of St. Louis, Charles G. Ramsey, who, being duly sworn, deposeth and saith that the annexed advertisement was published in the St. Louis Daily Evening News, printed within

the city of St. Louis, within said county and State, the newspaper of which he is the printer, for sixty-four days, the first insertion being on the 6th day of September, 1866, and the last insertion on the 8th day of November, 1866, as follows:

Insertion.	Volume.	Number.	Date.	Insertion.	Volume.	Number.	Date.
1	15	133	Sept. 6, 1866.	29	15	161	Oct. 9, 1866.
2	15	134	" 7, "	30	15	162	" 10, "
3	15	135	" 8, "	31	15	163	" 11, "
4	15	136	" 10, "	32	15	164	" 12, "
5	15	137	" 11, "	33	15	165	" 13, "
6	15	138	" 12, "	34	15	166	" 15, "
7	15	139	" 13, "	35	15	167	" 16, "
8	15	140	" 14, "	36	15	168	" 17, "
9	15	141	" 15, "	37	15	169	" 18, "
24							
10	15	142	" 17, "	38	15	170	" 19, "
11	15	143	" 18, "	39	15	171	" 20, "
12	15	144	" 19, "	40	15	172	" 22, "
13	15	145	" 20, "	41	15	173	" 23, "
14	15	146	" 21, "	42	15	174	" 24, "
15	15	147	" 22, "	43	15	175	" 25, "
16	15	148	" 24, "	44	15	176	" 26, "
17	15	149	" 25, "	45	15	177	" 27, "
18	15	150	" 26, "	46	15	178	" 29, "
19	15	151	" 27, "	47	15	179	" 30, "
20	15	152	" 28, "	48	15	180	" 31, "
21	15	153	" 29, "	49	15	181	Nov. 1, "
22	15	154	Oct. 1, "	50	15	182	" 2, "
23	15	155	" 2, "	51	15	183	" 3, "
24	15	156	" 3, "	52	15	184	" 5, "
25	15	157	" 4, "	53	15	185	" 6, "
26	15	158	" 5, "	54	15	186	" 7, "
27	15	159	" 6, "	55	15	187	" 8, "
28	15	160	" 8, "				

CHARLES G. RAMSEY.

Sworn to and subscribed before me, this 8th day of November, 1866.

J. C. H. CUNNINGHAM,
Justice of the Peace.

Printer's fees	$74 00
Affidavit	30
	$74 30

STATE OF MISSOURI, } ss:
County of Mississippi, }

RECORDER'S OFFICE.

I, James H. Bethune, clerk of the circuit — and *ex-officio* recorder of said county, certify that the annexed instrument of writing was filed in my office for record on the 25th day of October, 1867, and recorded in book 9, pages 175, 176, and 177.

In witness whereof, I have hereto set my hand and official seal.

[SEAL.] J. H. BETHUNE, *Recorder.*

25 STATE OF MISSOURI, } sct.:
County of New Madrid, }

I, John A. Mott, clerk and *ex-officio* recorder in and for the county of New Madrid aforesaid, do certify the annexed instrument of writing was filed for record the 10th day of November, 1867, and is truly recorded in book No. 21, on page 499, and following, of the records of New Madrid county.

In witness whereof, I hercunto sign my name and affix my official seal, this 10th day of November, A. D. 1867.

[SEAL.] JOHN A. MOTT, *Recorder.*

STATE OF MISSOURI, *County of Stoddard:*

RECORDER'S OFFICE.

I, Robert M. Fraker, clerk of the circuit court and *ex-officio* recorder of said county, certify that the annexed instrument of writing was filed in my office for record on the 30th day of December, 1867, and recorded in book "K," pages 158, 159, and 160.

In witness whereof, I have hereunto set my hand and official seal.

[SEAL.] R. M. FRAKER, *Recorder.*

STATE OF MISSOURI, *County of Scott:*

RECORDER'S OFFICE, *June 24th*, 1869.

I, George W. Arnold, clerk of the circuit court and *ex-officio* recorder of said county, certify that the annexed deed or instrument of writing was upon this date filed for record in my office, and is now duly recorded in record book of deed, Nos. 17, on pages 435, '6, '7, & '8.

In witness whereof, I have hereunto subscribed my name and affixed the official seal of said court, at office, in Commerce, the date aforesaid.

[SEAL.] GEORGE W. ARNOLD, *Recorder.*

26 *Deed from Reed et al. to Allen.*

Objected to by defendant. Objection overruled; to which the defendant excepts.

3. Plaintiff then offered a deed from McKay, Reed & Co., to Thomas Allen (as follows):

This deed, made and entered into this twelfth day of January, in

the year of our Lord eighteen hundred and sixty-seven, by and between Joseph C. Reed, Andrew J. McKay, John C. Vogel, and Samuel Simmons, parties of the first part, and Thomas Allen, party of the second part, witnesseth: That the said parties of the first part in consideration of the sum of two hundred and seventy-five thousand dollars, paid and secured to be paid to them by the said party of the second part, and for the further consideration of one hundred thousand dollars full paid-up stock, free from all calls and assessments of the capital stock of the association to be formed by said Thomas Allen for operation, and completing the railroads hereafter mentioned, which stock is to be paid by said party of the second part to said parties of the first part, and in consideration also, that said party of the second part has repaid to said parties of the first part the sum of one hundred and fifty-four thousand three hundred and eighty dollars, with interest from the seventeenth (17) day of December, A. D. 1864, being the amount advanced by said parties of the first part in the payment to the State of Missouri of the one-fourth part of the purchase-money of the railroads hereinafter mentioned, and the further consideration that the said party of
27 the second part has assumed, and does hereby assume and agree to pay the said State of Missouri the remaining three-fourths of said purchase-money as the sum shall become due according to the terms of the sale of said road made by said State to said parties of the first part, do hereby grant, bargain, and sell, convey, assign, transfer, and set over unto the said party of the second part, and his heirs and assigns forever, the following property, to wit: The Cairo and Fulton railroad of Missouri and the St. Louis and Iron Mountain railroad, with all the franchises, privileges, rights, title, and interest appertaining to said roads, and all roads, road-beds, rolling-stock, machinery, machine shops, and all other property, both real and personal of every description, or in anywise appertaining thereto, excepting such of the lands of the Cairo and Fulton railroad of Missouri as were excepted in the deed of said road from said State to said parties of the first part from said State of Missouri by two deeds of conveyance as follows, viz: One deed from said State of Missouri by Thomas C. Fletcher, the Governor thereof, dated January 7th, A. D. 1867, conveying to said Andrew J. McKay, John C. Vogel, and Samuel Simmons, the St. Louis and Iron Mountain railroad, and all its franchises, property, and appurtenances, and the other from said State by said Governor of the same State, conveying to said Joseph C. Read, Andrew J. McKay, John C. Vogel, and Samuel Simmons, the Cairo and Fulton railroad, and all its franchises,
28 property, and appurtenances, which deeds have been delivered to said party of the second part. To have and to hold the above-described property to him, the said party of the second part, and his heirs and assigns, forever. And in consideration of the premises the said party of the second part hereby covenants and agrees with the said parties of the first part, and their legal representatives, that he will well and truly keep and perform all of the agreements and covenants by them to have been kept and perform-,

according to the terms of two contracts executed in duplicate on the 15th day of November, A. D. 1866, one of said contracts being between Robert A. Wall and Bernard G. Farrar, commissioners of the St. Louis and Iron Mountain railroad, of the one part, and Andrew J. McKay, John C. Vogel, and Samuel Simmons, of the other part, and the other of said contracts being between Charles S. Rankin, Bernard G. Farrar, and Randolph F. W. E. Weber, commissioners of the Cairo and Fulton Railroad Company of Missouri, of the one part, and the said Joseph C. Read, Andrew J. McKay, John C. Vogel, and Samuel Simmons, of the other part, which said contracts have been delivered, one of each set, to the secretary of State of Missouri, and the other to the party of the second part. And in consideration of the premises the said party of the second part further covenants and agrees with said parties of the first part, and their legal
29 representatives, that he will also keep and perform all the conditions of a certain bond or writing obligatory, executed December 5th, A. D. 1866, by A. J. McKay, J. C. Read, Samuel Simmons, John C. Vogel, Erastus Wells, Benj. Farrar, and Marcus M. Hodgeman, for the sum of five hundred thousand dollars, in favor of said State, which bond is on file in the office of the secretary of State aforesaid, and will also keep and hold them and the other obligors in the said bond harmless from liability or loss by reason of their execution thereof, and in consideration that only a part of said sum of two hundred and seventy-five thousand dollars first above mentioned has been paid, and that the remainder thereof is secured to be paid by the five negotiable promissory notes of the said Thomas Allen, made payable to his own order, and by him endorsed and delivered to said parties of the first part, and of even date herewith, one of which said notes is for the sum of fifty-five thousand dollars, payable one month from its date, and one for the sum of fifty-five thousand dollars, payable in two months from its date; one for the sum of fifty-five thousand dollars, payable three months from its date; one for the sum of fifty thousand dollars, payable in four months from its date, and one for the sum of ten thousand dollars, payable in five months from its date, and all bearing interest from date at the rate of ten per cent. per annum, he, the said
30 party of the second part, does further covenant and agree with said parties of the first part, their heirs and assigns, or legal representatives, that if he shall fail to pay either of said notes according to its tenor and effect at maturity thereof, then the title to the railroads and other property hereby conveyed shall revert to and revert in said parties of the first part, their heirs or legal representatives, they shall have the right to take immediate possession thereof, and to use, operate, or dispose of the same as if this deed had not been made; but if all of said notes shall be well and truly paid at the times of their maturity, respectively, then this covenant shall be void, and in that case the said parties of the first — hereby authorize the said John C. Vogel and Samuel Simmons, or either of them, to execute and deliver to said party of the second part, or his legal representatives, for them, the said parties of the first part, and their name, place, and stead a deed of release releasing said party

of the second part, and his heirs and legal representatives from this said covenant, and also releasing said roads and property from the lien hereby reserved. In witness whereof, the said parties of the first and the said party of the second part have hereto set their hands and seals, the day and year first above written.

JOSEPH C. READ. [SEAL.]
ANDREW McKAY. [SEAL.]
JOHN C. VOGEL. [SEAL.]
31 SAMUEL SIMMONS. [SEAL.]
THOMAS ALLEN. [SEAL.]

STATE OF MISSOURI, } ss:
County of St. Louis, }

Be it remembered that on this twelfth day of January, eighteen hundred and sixty-seven, before me, the undersigned, Wm. Theodore Klein, a notary public within and for the county and State aforesaid, personally came Joseph Read, Andrew J. McKay, John C. Vogel, Samuel Simmons, and Thomas Allen, who are all personally know- to me to be the same persons whose names are subscribed to the foregoing instrument of writing as parties thereto, and they severally acknowledge the same to be their act and deed for the purpose therein mentioned.

In testimony whereof, I have hereunto set my hand and affixed my notarial seal, at office, in the city of St. Louis, the day and year above written.

[SEAL.] WM. THEODORE KLIEN,
Notary Public, St. Louis County, Mo.

STATE OF MISSOURI, } ss:
County of St. Louis, }

I, the undersigned recorder for said county, certify that the foregoing instrument of writing was filed for record in my office August 1st, 1867, and is truly recorded in book 348, page 2.

Witness my hand and official seal, date aforesaid.

[SEAL.] JULIUS CONRAD, *Recorded.*

STATE OF MISSOURI, } ss:
Jefferson County, }

I, Elias F. Honey, clerk of the circuit court and *ex officio*
32 recorder within and for the said county, do hereby certify that the foregoing instrument of writing was filed for record in my office on the 13th day of August, 1867, and that the same is truly recorded therein in book "Y," page 54.

In testimony wherof, I have hereunto set my hand and affixed the seal of said circuit court, at the office in Hillsboro, the date last aforesaid.

[SEAL.] ELIAS F. HONEY, *Recorder.*

STATE OF MISSOURI, } ss:
County of Washington, }

I, W. T. Hunter, clerk of the circuit court and *ex officio* recorder

within and for said county, do hereby certify that the foregoing instrument of writing was filed for record in my office on the 22nd of August, 1867, and that the same is truly recorded therein in book "P," page 137.

In testimony whereof I have hereunto set my hand and affixed the seal of said circuit court at office in Potosi, the date last aforesaid.

[SEAL.] W. T. HUNTER, *Recorder.*

STATE OF MISSOURI, } ss:
County of St. Francois, }

I, William R. Tayler, clerk of the circuit court and *ex officio* recorder within and for said county, do hereby certify that the annexed instrument of writing was filed and truly recorded in my office, in book "K," page 644, and following, on the 31st day of August, 1867.

[SEAL.] W. R. TAYLER, *Recorder.*

STATE OF MISSOURI, } ss:
County of New Madrid, }

I, John A. Mott, clerk and *ex officio* recorder in and for the county of New Madrid aforesaid, do certify the annexed instrument
33 of writing was filed for record tenth day of November, 1867, and is truly recorded in book No. 21, on page 496, and following of the records of New Madrid county.

In witness whereof I hereunto sign my name, and affix my official seal, this tenth day of November, A. D. 1867.

[SEAL.] JNO. A. MOTT, *Recorder.*

STATE OF MISSOURI, } ss:
County of Iron, }

I, James Huff, clerk of the circuit court, and *ex officio* recorder in and for said county, hereby certify that the foregoing instrument of writing was filed in my office September 13th, 1867, and recorded in book "F," pages 513, 514, and 515.

Witness my hand, and seal of said court hereto affixed, at office, Ironton, Mo., this September 14th, 1867.

[SEAL.] JAMES HUFF, *Recorder,*
By J. T. AKE, *Dep'ty Rec'd.*

STATE OF MISSOURI, } ss:
County of Mississippi, }

RECORDER'S OFFICE.

I, James H. Bethune, clerk of the circuit court and *ex officio* recorder of said county, certify that the annexed instrument of writing was filed in my office for record on the 25th day of October, 1867, and recorded in book 9, pages 173, 174, 175.

In witness whereof I have hereunto set my hand and official seal.

[SEAL.] JAMES H. BETHUNE, *Recorder.*

STATE OF MISSOURI, } ss:
County of Scott, }

RECORDER'S OFFICE.

I, George W. Arnold, clerk of the circuit court and *ex officio*
34 recorder within and for the county aforesaid, certify that the annexed instrument of writing was this June 24th, A. D. 1868, by me duly filed and recorded in my office in Record Book of Deeds. No. 17, pages 439, 440, and 441.

In testimony whereof I have hereunto subscribed my name, and affixed the official seal of said circuit court, at my office in Commerce, the date aforesaid.

[SEAL.] GEORGE W. ARNOLD,
Clerk and Ex Officio Recorder.

STATE OF MISSOURI, *County of Stoddard:*

RECORDER'S OFFICE.

I, Robert M. Fraker, clerk of the circuit court and *ex officio* recorder of said county, certify that the annexed instrument of writing was filed in my office for recorder on the 30th day of December, 1867, and recorded in book "K," page 155, 156, & 157. In witness whereof, I have hereunto set my hand and official seal.

[SEAL.] R. M. FRAKER, *Recorder.*

To the introduction of which defendant objected.

Objection overruled and the deed read in evidence, to which defendant then and there excepted.

4. Plaintiff then presented the articles of incorporation of the Cairo, Arkansas and Texas Railroad Company (as follows):

Articles of Incorporation of C., A. & T. R. R.

These articles of incorporation, made and entered into by Thomas Allen, Henry G. Marquand, William H. Swife, Wm. T. Blodgett, Samuel Copp, Wm. R. Allen, S. H. Lafflin, William R. Donaldson, R. B. Mintum, William E. Burrs, D. W. McWilliams, George C. Ward, and Arthur W. Soper, witness, that whereas under and
35 in pursuance of the laws of the State of Missouri the Governor of said State did advertise and sell to the highest and best bidder, at public auction, the Cairo & Fulton railroad of Missouri, with all the property, real and personal, choses in action, rights, privileges, and franchises belonging and appertaining to said road, the said sale having been made on the first day of October, A. D. 1866, at the east front door of the court-house, in the city and county of St. Louis; and whereas the said State of Missouri, acting by its commissioners, appointed and qualified under said act, approved February 19, 1866, became the highest and best bidder for said road and other property above mentioned, appertaining thereto at the sale thereof as aforesaid; and whereas the same was struck off and sold to said State; and whereas further, by two acts of the General Assembly of said State, the first being an act entitled "An act

to provide for the sale of certain railroads and property by the Governor to foreclose the State's lien thereof, and to secure an early completion of the Southwest Branch Pacific, the Platte County, the St. Louis and Iron Mountain, and the Cairo and Fulton railroads of Missouri," approved February 19, 1866, and being the same act above referred to, as being approved on that date, and the other of said acts being "An act supplementary to and explanatory of the same," which said other act was approved March 19, 1868, the said commissioners of the Cairo and Fulton railroad of Missouri did advertise for
36 sale, and did award to parties who bid under the names A. J. McKay and others for said Cairo and Fulton railroad, the said road, with all the property and franchises appertaining thereto as aforesaid, Joseph C. Read, A. J. McKay, John C. Vogel, and Samuel Simmons having been declared by said *said* commissioners the highest and best bidders therefor; and whereas the said award has been approved by the Governor of said State and a contract, as required by said act approved February 19, 1866, has been executed and entered into in duplicate between the commissioners of the State for the Cairo and Fulton railroad of the first part and the said Joseph C. Read, A. J. McKay, Jno, C. Vogel, and Samuel Simmons, parties of the second part; and whereas said contract was approved by the Governor of the State as required by law, and said Governor for the State of Missouri has further executed and delivered to said Read, McKay, Vogel, and Simmons a deed of conveyance, conveying to them in joint tenancy, and not in tenancy in common, and to their legal representatives, the said Cairo and Fulton railroad of Missouri, with its property, real and personal, choses in action, franchises, rights, and privileges, in accordance with the provisions of said last-named act; and whereas the grantees in said deed have conveyed the title acquired by them to said railroad and property and franchises as aforesaid by deed to Thomas Allen and his heirs and
37 assigns; and whereas the said Thomas Allen is about to incorporate himself, and hereby doth incorporate himself, with a number of stockhold-s, amounting in all to thirteen, whose names are hereto subscribed for the purposes contemplated and as authorized by and under the act of the said General Assembly, entitled an act authorizing the incorporation of the purchaser or purchasers of any railroad, or of any part, section, or branch thereof, which has heretofore, or may hereafter, become forfeited to and sold by the State, approved March 20, 1866: Now, therefore, the said Thomas Allen doth hereby incorporate himself, with the said twelve other corporators hereinbefore named, for the purpose of taking possession of the property, real and personal, choses in action, franchises, rights, and privileges appertaining to said railroad and to and of the railroad itself, which were to the parties aforesaid conveyed or transfer-ed by the State of Missouri as aforesaid, and to enable them and their associates and successors to complete, furnish, equip, operate, manage, and control the said railroad, parts, sections, or branches thereof, and the property, franchises, and appurtenances thereto belonging, or in anywise appertaining, the name of the corporation shall be The Cairo, Arkansas and Texas Railroad Company, the number of miles re-

quired to be built to complete said road is as near as may be fifty-nine (59), reserving the right to build branches to the Mississippi river, and also to connect with any other railroad in the States of Missouri
38 or Arkansas. The corporation shall continne one hundred years; the capital stock shall be two million of dollars, which shall consist of twenty thousand shares of one hundred dollars each. The following parties hereto shall be the directors of the corporation for the first year and until others are chosen in their place, viz: Thomas Allen, Henry G. Marquand, William H. Swift, William F. Blodgett, Samuel Copp, William R. Allen, Sylvester H. Laflin, William R. Donaldson, Robert B. Minturn, William E. Burr, Daniel W. McWilliams, George C. Ward, and Arthur W. Soper. The places to and from which the railway or railways of this corporation are to be constructed, completed, and operated on a point on the Mississippi river opposite the city of Cairo and a point at or near Poplar Bluffs, on the Kansas branch of the St. Louis and Iron Mountain railroad.

In testimony whereof, the said party have signed these presents, and have set forth the number of shares of stock which each agrees to take in said corporation and their respective names and places of residence, this twenty-third day of April, in the year of our Lord eighteen hundred and seventy-two.

5c. rev. stamp. THOMAS ALLEN,
St. Louis, Mo., one hundred shares.

5c. rev. stamp. HENRY G. MARQUAND,
New York, one hundred shares.

5c. rev. stamp. G. C. WARD,
By S. G. WARD,
Att'y, New York, fifty shares.

5c. rev. stamp. WILLIAM T. BLODGETT,
By JAMES S. DAY,
Att'y, New York, fifty shares.

5c. rev. stamp. SAMUEL COPP, St. Louis, fifty shares.

39 5c. rev. stamp. W. R. ALLEN,
St. Louis, Mo., one hundred shares.

5c. rev. stamp. SYLVESTER H. LAFLIN,
St. Louis, Mo., ten shares.

5c. rev. stamp. WM. R. DONALDSON,
St. Louis, Mo., fifty shares.

5c. rev. stamp. ROBERT B. MINTURN,
New York city, one hundred shares.

5c. rev. stamp. WILLIAM E. BURR,
St. Louis, Mo., ten shares.

5c. rev. stamp. D. W. McWILLIAMS,
New York, fifty shares.

5c. rev. stamp. A. W. SOPER, St. Louis, ten shares.

5c. rev. stamp. W. N. SWIFT,
New York city, fifty shares.

STATE OF MISSOURI, } ss:
County of Stoddard, }

Be it remembered that on this sixteenth day of May, A. D. 1872, personally came before me Thomas Allen, S. H. Laflin, and William R. Donaldson, three of the directors named in the annexed articles of incorporation of the Cairo, Arkansas and Texas Railroad Company, and being by me duly sworn, deposed and said: That at least one thousand dollars for every mile of railroad necessary to be made to complete the road therein described has been in good faith subscribed, and five per cent. paid thereon in good faith and in cash to the directors named in said articles of incorporation, and that it is intended in good faith to complete and maintain and operate the road mentioned in said articles.

THOMAS ALLEN.
S. H. LAFLIN.
WM. R. DONALDSON.

Subscribed and sworn to before me, this 16th day May, 1872.
40 Witness my hand and seal.
[SEAL.] J. W. WALLACE,
Notary Public.

OFFICE OF SECRETARY OF STATE, CITY OF JEFFERSON, MISSOURI.

I, Eugene F. Weigel, secretary of State of the State of Missouri, do hereby certify that the annexed pages contain a true, complete, and full copy of the articles of association of The Cairo, Arkansas & Texas Railroad Company, filed May 21st, 1872, as appears by comparing the same with the original of said articles now on file as the law directs in this office.

In testimony whereof, I have hereunto set my hand and affixed my official seal. Done at office, this 15th day of October, A. D. 1872.
[SEAL.] EUGENE F. WEIGEL,
Secretary of State.

(Endorsed:) Articles of incorporation of The Cairo, Arkansas and Texas Railroad Company. (Certificate issued 113, 12, '72). Recorded on pages 107–8–9 & 10, Book R. R., Association I. Filed May 21, 1872. Eugene F. Weigel, secretary of State.

5. Plaintiff then offered the agreement for the consolidation of Cairo, Arkansas & Texas Railroad Company with the St. Louis—Iron Mountain Railroad Company, and the agreement for the consolidation of the St. Louis and Iron Mountain Railroad Company with the Cairo and Fulton Railroad Company, under the name of The St. Louis, Iron Mountain and Southern Railroad Company, which agreements are as follows, to wit:

41 *Agreement of Consolidation of St. L. & I. M. R. R. with C. A. & T. R. R.*

Know all men by these presents, that whereas The St. Louis Iron Mountain Railroad Company, a corporation organized under the

acts of the General Assembly of the 20th of March, 1866, hereinafter recited, and succeeding to the property and franchises of the corporation created by the act of the 3rd of March, 1851, hereinafter cited, is the owner, among other property, of a railroad and two branches; the main line extending from the city of St. Louis to the town of Belmont, and from Bismar-k to Pilot Knob, two hundred and six miles in length, a branch extending from Pilot Knob to the line between the State- of Missouri and Arkansas, 99 miles in length, and a branch from Mineral Point to the town of Potosi, 4 miles in length; and whereas the Cairo, Arkansas and Texas Railroad Company, a corporation likewise organized under said recited act of 20th of March, 1866, and succeeding to the property and franchise of the Cairo and Fulton Railroad Company, of Missouri, is the owner, among other property, of a railroad 72 miles in length, extending from a point on the west bank of the Mississippi river, opposite the city of Cairo, to a point on the Arkansas branch of the St. Louis and Iron Mountain railroad at the town of Poplar Bluff; and whereas power and authority are given by the laws of the State of Missouri to said St. Louis and Iron Mountain Railroad Company, and said Cairo,
42 Arkansas & Texas Railroad Company to unite and consolidate each with the other and form one company; and more especially is such power and authority given and granted by the General Assembly of the State, viz:

1st. An act entitled an act to incorporate the St. Louis and Iron Mountain Railroad Company, approved March 3rd, 1851, and the several acts amendatory of said last-named act.

2. An act entitled "An act to provide for the sale of certain railroads and property by the Governor to foreclose the State's lien thereon, and to secure an early completion of the Southwest Branch Pacific, the Platte County, the St. Louis and Iron Mountain, and the Cairo & Fulton railroad of Missouri, approved February 19th, 1866.

3. An act entitled "An act authorizing the incorporation of the purchaser or purchasers of any railroad, or of any part, section, or branch thereof which has heretofore, or may hereafter, become forfeited to and sold by the State," approved March 20th, 1866. And 4th, an act entitled "An act to confirm the title of the St. Louis and Iron Mountain railroad to Thomas Allen, his heirs and assigns, and to deliver possession thereof to the St. Louis and Iron Mountain Railroad Company, organized as a corporation on the 29th day of July, 1867, and to appropriate certain funds for the building of a railroad from Pilot Knob to the State line of Arkansas," approved March 17, 1868; and whereas the said St. Louis and Iron Mountain Railroad Company and the said Cairo, Arkansas & Texas
43 Railroad Company desire to avail themselves of the benefit of the said laws of this State by consolidating themselves one with the other, and forming one company, under and by authority of said laws. Now, therefore, these articles of union and consolidation made and concluded this the eleventh day of March, A. D. 1874, by and between the said St. Louis and Iron Mountain Railroad

Company and the said Cairo, Arkansas and Texas Railroad Company, witness that—

First. The said St. Louis and Iron Mountain Railroad Company and said Cairo, Arkansas and Texas Railroad Company, by and with the consent and approval of the owner of the capital stock of each of them, in consideration of the premises and of the benefit and advantages that will accrue to the parties respectively and to their stockholders, have this day agreed each with the other to unite, amalgamate, and consolidate themselves, & they do hereby unite, amalgamate, consolidate, and merge themselves into one body corporate under the name and style of The St. Louis and Iron Mountain Railroad Company, and the stocks of the said two corporations so uniting shall henceforth form and be one common stock, and all of the estate and property, real, personal, and mixed, and all of the rights, powers, privileges, franchises, advantages, and immunities belonging or pertaining to each of said two corporations
44 shall be, and are hereby, transferred to and fully vested in the said body corporate hereby created; and all the obligations and liabilities of the said two corporations respectively, shall henceforth become and be the obligations and liabilities of the said body corporate hereby created.

Second. The authorized capital of the said St. Louis and Iron Mountain Railroad Company and branches, in twelve million five hundred thousand dollars in the aggregate, ten millions of which pertained to the main line, and two millions five hundred thousand dollars thereof to the Arkansas branch, the whole divided into 125,000 shares, of 100.00 dollars each, and the authorized capital of the Cairo, Arkansas and Texas Railroad Company is two millions of dollars, divided into 20,000 shares of 100 dollars each; and it is hereby declared that the capital of the said body corporate created by these presents, shall until the same shall hereafter be increased or diminished, be the sum of the capital of the two corporations hereby united, and it is also hereby further declared that the whole number of shares of stock pertaining to the main line owned by the stockholders in said existing St. Louis and Iron Mountain Railroad Company is one hundred thousand shares, and that each of said shares shall entitle its owner to one share and $\frac{15}{100}$ths of a share of the stock in the consolidated company, and that the whole
45 number of shares of stock pertaining to said Arkansas branch owned by the stockholders in said St. Louis and Iron Mountain Railroad Company is 25,000 shares, and that each of said last-named shares shall entitle its owner to sixty-five one-hundredths of one share of the stock in the consolidated company, and that the whole number of shares of stock owned by stockholders in said Cairo, Arkansas & Texas Railroad Company is 20,000 shares, and that each of said shares shall entitled its owner to sixty-hundredths of a share of stock in said consolidated company, and certificates of stock in said consolidated company for the number of shares to which each shareholder shall, under these articles, be entitled, shall be granted and issued to each shareholder in such manner and form and under such regulations as may be prescribed by the board of directors of

said consolidated company, and the said consolidated company shall have all the power for the increase and diminution of its capital stock, and for the sale and disposal of its unsold stock which are by law now had and enjoyed by the said two companies consolidating, and transfers of the stock in said consolidated company shall be made under such rules and regulations as may be prescribed by the board of directors of said last-named company.

Third. There shall be seven directors, until the number shall
46 be increased or diminished to manage the affairs and business of said consolidated company. The first board of directors shall consist of the following-named persons, viz: Thomas Allen, who shall be president of said consolidated company; S. H. Laflin, H. G. Marquand, Alonson Trask, George Cabot Ward, Gerard B. Allen, and Samuel Copp. There shall be an election of directors by the stockholders of the consolidated company at the office of the company in the city of St. Louis on the — day of ——, 1874, and the directors therein chosen shall hold their offices until the then next annual election and until their successors are chosen.

Fourth. The stated meetings of the stockholders of the consolidated company shall be held at the office of the company in city of St. Louis, on the first Tuesday of March in each and every year after the present year, at which an annual election of directors shall be made by said stockholders; every such election shall be by ballot, and each share of stock shall entitle the holder thereof to one vote, to be given either in person or by proxy; the directors so to be chosen shall ch-ose by ballot one of their numbers to be president of the said consolidated company, who shall serve for one year and until the election of a successor. The omission to hold an election for directors at the time prescribed shall in no wise effect the said body corporate, but such election may be had upon
47 due notice given and published as required by the by-laws at any time after the time so prescribed as aforesaid; the directors (except those hereby appointed) shall hold their office for one year and until their successors are elected, and the power of the said president and directors shall be — same as are now vested by law in the parties entering this consolidation. In case of the death, resignation, or removal from office or other disqualifications of any other director the board shall have power to fill such vacancy by appointment until the next regular election. A majority of the whole number of directors shall be sufficient to form a board for the transaction of business, and every decision of a majority of them duly assembled as a board shall be valid as a corporate act; the directors may, if they deem it advisable, appoint an executive committee consisting of one or more members for such time and for the performance of such duties as may be prescribed by the by-laws, or by resolutions of the board, a majority of which committee, in case it shall consist of more than one member, shall constitute a quorum hereof, and be competent to discharge the duties imposed upon such committee. All officers and agents of the corporation other than directors shall be appointed by the board of directors, who may prescribe their

duties and exact such security for the performance of their duties as they deem proper.

48 Fifth. Stated meetings of the board of directors of the consolidated company shall be held at the office of the company on the second Tuesday of each month, and special meetings may be held at such times and places as may be designated in the calls for such meetings. Special meetings of the board may be called by the president or by any two directors.

Sixth. No by-law of the consolidated company shall contravene any of the terms or stipulations of these articles; and the existing by-laws of the St. Louis and Iron Mountain Railroad Company, one of the parties to this union, shall, until altered or repealed, be the by-laws of the corporation hereby created; and the present corporate seal of the St. Louis and Iron Mountain Railroad Company shall be the corporate seal of the company created until another is substituted; and all rules and regulations necessary for the management of the business and conduct of the officers of the company, not provided for in a by-law, may be made by the directors or by their authority.

In testimony whereof, the directors of the several corporations parties hereto have [caused] these presents to be signed in the name thereof by their respective presidents, and their several corporate seals to be affixed hereto, this the eleventh day of March, A. D. 1874.

[SEAL.] THE ST. LOUIS AND IRON MOUNTAIN RAILROAD COMPANY,
By THOS. ALLEN, *President.*

[SEAL.] THE CAIRO, ARKANSAS AND TEXAS RAILROAD COMPANY,
By THOS. ALLEN, *President.*

49 I, Stephen D. Barlow, secretary of the St. Louis and Iron Mountain Railroad Company, do hereby certify that a meeting of the stockholders of said company and of its Arkansas branch was duly held at the office of the company, in the city of St. Louis, on the 11th day of April, A. D. 1874, at 12 o'clock noon, for the purpose of taking into consideration the foregoing agreement, due notice of the time and place of holding said meeting and the object thereof having been given by said company as provided by law; that at said meeting of stockholders the said agreement was read and consdered, and a vote by ballot taken for the adoption or rejection of the same according to law, which said ballot resulted as follows, to wit: Forty-six thousand four hundred and forty-five votes (46,445), representing eighty-four thousand three hundred and twenty-six shares of stock (84,326) in the main line of said company, were cast for the adoption of said agreement, and that no votes were cast against said agreement; that the total amount of stock held by all the stockholders in the main line of said company is one hundred thousand (100,000) shares, each share up to six hundred shares (600) entitling the shareholders to one vote, and each three shares held by said shareholder in excess of six hundred shares enti-

tling him to one vote; that eighteen thousand six hundred and fifty-two (18,652), representing eighteen thousand six hundred
50 and fifty-two shares of stock (18,652) in the Arkansas Branch of said railroad company were cast for the adoption of said agreement; that no votes were cast against said agreement; that the total amount of stock held by all the stockholders of said branch road is twenty-five thousand shares (25,000), each share entitling the holder to one vote, and that the total number of votes cast in favor of said agreement by the stockholders of the main line of said railroad company, and by the stockholders of said Arkansas Branch respectively, and the total number of shares of stock represented thereby respectively exceeded two-thirds of all the votes & shares of stock in the main line of said company and of its Arkansas Branch respectively, and that, therefore, said agreement was declared to be duly adopted.

In testimony whereof, I have hereunto set my hand and affixed the corporate seal of said company, this 13th day of April, 1874.

[SEAL.] S. D. BARLOW, *Secretary.*

I, William Russel Allen, secretary of the Cairo, Arkansas & Texas Railroad Company, do hereby certify that a meeting of the stockholders of said company was held at the office of the company, in the city of St. Louis, on the 11th day of April, A. D. 1874, at twelve o'clock noon, for the purpose of taking into consideration the foregoing agreement, due notice of the time and place of holding said meeting, and the object thereof, having been given by said
51 company, as provided by law; that at said meeting of stockholders the said agreement was read and considered, and a vote by ballot taken for the adoption or rejection of the same according to law, which said ballot resulted as follows, to wit: Eighteen thousand and sixty-five votes, representing eighteen thousand and sixty-five shares of stock in said company, were cast for the adoption of said agreement; and that no votes were cast against said agreement; that the total amount of stock held by all the stockholders in said company is twenty thousand shares (20,000), each share entiitling the stockholder to one vote; and that the total number of votes and shares cast and represented in favor of said agreement by the stockholders in said railroad company exceeded two-thirds of all the votes and shares of stock represented in said Cairo, Arkansas & Texas Railroad Company, and that thereupon said agreement was declared to be duly adopted.

In testimony whereof, I have hereunto set my hand and affixed the corporate seal of said company, this the 13th day of April, A. D. 1874.

[SEAL.] WILLIAM R. ALLEN, *Secretary.*

(Endorsed:) Agreement for the consolidation of the St. Louis and Iron Mountain Railroad Company and Arkansas Branch with the Cairo, Arkansas & Texas Railroad Company.

52 *Agreement of Consolidation of St. L. & I. M. R. R. with C. & F. R. R.*

OFFICE OF ST. LOUIS AND IRON MOUNTAIN RAILROAD CO.,
ST. LOUIS, *April 30th*, 1874.

Board of directors.

Extract of proceedings of board of directors of said company at the above date.

1st. Resolved, That this company will enter into an agreement with the Cairo and Fulton Railroad Company for consolidating The St. Louis and Iron Mountain Railroad Company with the Cairo and Fulton Railroad Company on the basis recommended by the several committees of the railroad companys on the question, and which is recognized in the form of agreement submitted for execution.

2nd. Resolved further, That the president of this company —, and he is hereby, authorized and directed to execute the agreement submitted, to be, however, subject to the approval and confirmation of the stockholders of this company at their meeting called to be holden on Friday, the first day of May, ensuing, and that when said agreement is so approved in stockholders' meeting, he cause the same to be carried into effect by calling in the certificates of stock of the old companys outstanding and having it exchanged for stock in the new company, according to the terms of said agreement.

3rd. Resolved, That the name of the new consolidated company shall be "St. Louis, Iron Mountain and Southern Railway Company."

53 ST. LOUIS AND IRON MOUNTAIN RAILROAD COMPANY,
ST. LOUIS, *May 1st*, 1874.

Stockholders' meeting.

Copy of resolution adopted at the stockholders' meeting of said company on the above date.

"Resolved, That the agreement executed on behalf of the St. Louis and Iron Mountain Railroad Company of Missouri by Thomas Allen, president of said company, under and by authority of a resolution of the board of directors of said company, and now here submitted for approval and adoption by the stockholders of this company, be, and the same is hereby, approved and adopted, and that the president and directors of this company are hereby directed to carry into effect the provisions thereof whenever said agreement shall have been executed by the said Cairo and Fulton Railroad Company and approved by the stockholders of said company."

CAIRO AND FULTON RAILROAD COMPANY,
LITTLE ROCK, *Monday May* 4, 1874.

Directors' meeting.

The following is an extract of the proceedings of the Board of Directors of said company, of the State aforesaid:

1st. Resolved, That this company will enter — an agreement with the St. Louis and Iron Mountain Railroad Company for uniting and consolidating this company with the said St. Louis and Iron
54 Mountain Railroad Company, and for making joint stock of the two companies, and forming one board of directors for the management of the affairs of said companies on the basis jointly recommended by the committees on consolidation and embraced in the agreement executed by the said St. Louis and Iron Mountain Railroad Company and now here submitted for execution on the part of this company.

2nd. Resolved further, That the president of this company be, and he is hereby, authorized and directed to execute the agreement submitted, to be, however, subject to the approval and confirmation of the stockholders of this company, at the meeting called to be holden on Monday the 4th day of May inst., or any other day thereafter; and when approved, that the president cause the same to be carried into effect and call in the certificates of stock in this company outstanding, and exchange them for stock in the new company, according to terms of the agreement.

CAIRO AND FULTON RAILROAD COMPANY,
MONDAY, *May* 4, 1874.

Stockholders' meeting.

Copy of resolutions adopted at the meeting of stockholders of said company on the above date.

Resolved, That the agreement for consolidating the Cairo and Fulton Railroad Company with the St. Louis and Iron Mountain Railroad Company, which has been executed on behalf of
55 this company by Thos. Allen, president, under and by authority of a resolution of the board of directors of said company, and now here submitted to this meeting for approval and adoption by the stockholders of this company, be, and the same is hereby, approved and adopted.

Memorandum of an agreement made and entered into this thirtieth day of April, in the year of our Lord one thousand eight hundred and seventy-four, by and between the St Louis & Iron Mountain Railroad Company, a corporation organized and existing under and by virtue of the laws of the State of Missouri, party of the first part, and the Cairo and Fulton Railroad Company, a corporation organized and existing under and by virtue of the laws of the State of Arkansas, party of the second part.

Whereas the party of the first part owns and operates a line of railroad extending from the city of St. Louis southward to the boundary line between the States of Missouri and Arkansas, where it intersects the railroad of the said party of the second part; it also owns and operates a line of railroad from Bismark to Belmont, and also owns and operates a line of railroad running from Poplar Bluff eastward to the Mississippi river, at a point opposite the mouth of the Ohio river, and a branch railroad from Mineral Point to Potosi, all in the State of Missouri, and the party of the second part owns and operates a line of railroad extending from the boundary line between the States of Missouri and
56 Arkansas, where it forms a junction with the line of railroad of the party of the first part, through the cities of Little Rock and Fulton to the town of Texarkana, upon the boundary line between the States of Arkansas and Texas, and the said railroads form continuous and connecting lines of railroads with each other, so constructed as to admit the passage of burthen and passenger cars over each continuously, without change, break, or interruption. And whereas the said parties are authorized by the laws of the several States aforesaid to consolidate their capital stock, franchises, and property together and become one corporation, and it is believed that such consolidation will be beneficial to the stockholders of each of said corporations and the public—

Now, therefore, this agreement witnesseth, that the said parties of the first part and second parts hereto, by their respective boards of directors, duly convened, have agreed, and do hereby agree, to merge and consolidate the capital stock, franchises, and property of the said two corporations so that the same shall become the capital stock, franchises, and property of one corporation, and for that purpose the said parties do hereby make and prescribe the following terms and conditions of such merges and consolidation, and the mode of carry-
the same into effect:

57 Article I.

The name of the new corporation shall be St. Louis, Iron Mountain and Southern Railway Company.

Article II.

SECTION 1. The directors of the said new corporation shall be thirteen in number, and the officers thereof shall consist of a president, one or more vice-presidents, a secretary, and treasurer, and other officers as may by the board of the directors be deemed necessary; all the directors shall be severally stockholders of the corporation, and qualified to vote for directors at the election at which the- shall be chosen. The offices of secretary and treasurer may be filled by one and the same person.

SECTION 2. The following-named persons, who reside, respectively, at the places set opposite their several names, shall be the first directors of the new corpoation, that is to say:

1. Thomas Allen, St. Louis, Misssouri.
2. Henry G. Marguand, New York.

3. George Cabot Ward, New York.
4. William F. Blodgett, New York.
5. H. L. Higginson, Boston, Mass.
6. William N. Swift, New York.
7. Sylvester H. Laflin, St. Louis, Missouri.
8. William Russell Allen, do.
9. Stephen D. Barlow, do.
10. James M. Loughborough, Little Rock, Arkansas.
11. Gerard B. Allen, St. Louis, Missouri.
58 12. Samuel Copp, St. Louis, Missouri.
13. U. M. Rose, Little Rock, Arkansas.

And the following persons, who reside respectively at the places set opposite their several names, shall be the first officers of said new corporation, as below designated, that is to say:

President, Thomas Allen, of St. Louis, Missouri.
Vice-president, Henry G. Marguand, of New York.
Secretary, Stephen D. Barlow, of St. Louis, Missouri.
Treasurer, D. W. McWilliams, of New York.

SECTION 3. The said directors and officers shall continue to be such until the 1st Tuesday of March, in the year 1875, and until others are duly elected or chosen in their places and qualified.

Article III.

SECTION 1. The first annual election of said new corporation shall be held at the office of said new corporation, in the city of St. Louis, on the first Tuesday in March, in the year 1875, and elections shall be held annually thereafter; notice of the time and place of each and every election shall be given by the secretary, as prescribed by the company's by-laws.

SECTION 2. At each annual election there shall be chosen, by a majority of the votes of the stockholders voting in person or by proxy hereat, thirteen directors, who shall continue in office until others are elected and qualified in their places.

SECTION 3. The election of stockholders shall be conducted by three judges or inspectors thereof, to be appointed by the board of directors, or, in case of their omission so to do, then by the
59 stockholders qualified to vote at said election, neither of whom, however, shall be competent to be elected to any other office of the company at such election.

SECTION 4. At all elections each stockholder shall be entitled to one vote on every share of stock standing in his name on the books of the corporation not less than thirty days previous to such election.

SECTION 5. In the event of a failure to elect directors, or to hold the annual meeting therefor, said new corporation shall not be thereby dissolved or deemed abandoned, but the directors for the time being shall continue such until the next annual election, or until their successors shall be elected in the manner which may be provided for in the by-laws of the company, not inconsistent with the provisions of this agreement.

SECTION 6. Vacancies in the board of directors may be filled by the remaining directors at any regular meeting of the board, or at

any meeting duly convened in accordance with the provisions of the by-laws of the corporation.

SECTION 7. As soon after each annual election as may be, the directors shall elect one of their number as president, another as vice-president, and shall appoint or provide for the appointment of all other necessary officers and agents, who shall serve until other persons are duly chosen in their places.

Article IV.

60 SECTION 1. The capital stock of the corporation shall consist of $26,500,000, divided into 265,000 shares of $100 each.

SECTION 2. Every stockholder in each of the corporations, parties hereto of the 1st & 2nd parts, shall receive in place of the stock held by him in such corporation stock in the new corporation as follows, to wit: For each share of the stock held in the St. Louis and Iron Mountain Railroad Company he shall receive one share of stock in the St. Louis, Iron Mountain and Southern Railway Company, and for each share of stock held in the said Cairo and Fulton Railway Company he shall receive sixty-hundredths of one share in the St. Louis, Iron Mountain and Southern Railway Company.

Article V.

Before any person appointed or elected treasurer of the new corporation shall enter upon the performance of the duties of the office, he shall execute a bond with such sureties and in such sum as shall be fixed and approved by the board of directors, or by a majority of directors, conditioned for the faithful performance of the duties of his office.

Article VI.

SECTION 1. Upon the making and perfecting this agreement and act of consolidatlon, and upon the adoption and ratification thereof by two-thirds of all the votes of all the stockholders of the respective parties hereto, and upon the filing of the same, or a copy thereof in the manner prescribed by law, the parties hereto shall be
61 deemed and taken to be one corporation, by the name provided in this agreement, and shall possess, within the several States & through which its railroad or any part thereof or its branches or leased lines may run, all the rights, privileges, and franchises of each of said corporations so consolidated.

SECTION 2. Upon the consum-ation of said act of consolidation, as provide- by law, all and singular the rights, privileges, and franchises of each of said corporation parties hereto, and all other property, real, personal, and mixed, and all debts due on whatever account, as well stock subscriptions as other things in action, belonging to each and every of said corporations parties hereto, shall be taken and deemed to be transferred to and vested in the St. Louis, Iron Mountain and Southern Railway Company, as such new corporation, without further act or deed, and all property, all rights of way, and all and every other interest shall be as effectually the property

of this new corporation without further conveyance or assurance as they were of the former corporation parties hereto, and all rights of creditors and all liens upon the property created by either of the said corporations shall be preserved unimpaired, notwithstanding said merger and consolidations, and all debts, liabilities, obligations, and duties of either of said corporations parties hereto shall thenceforth attach to the said new corporation, and be enforced
62 against it to the same extent and in the same manner as if said debts, liabilities, obligations, and duties had been incurred or contracted by it; and the board of directors of said company shall have full power and authority to borrow such sums of money and in such form as they may deem proper to pay off the present debts and liabilities so assumed by the corporation hereby created, and to meet other exigencies of the company and to secure the payment thereof by a mortgage or mortgages on the property and franchises of said company or any part thereof. The by-laws which may be adopted by concurrent resolutions of stockholders' meeting of said companies, parties hereto, shall be the by-laws of said consolidated company, subject to repeal or amendment as therein or by law provided.

In testimony whereof, the directors of the several corporations, parties hereto, have caused these presents to be signed in the names thereof by their respective presidents, and their several corporate seals to be affixed hereto, this the thirtieth day of April, A. D. 1874.

[SEAL.] THE ST. LOUIS & IRON MOUNTAIN RAILROAD COMPANY,
(Sig.) By THOMAS ALLEN, *President.*
Attest: S. D. BARLOW, *Secretary.*
[SEAL.] CAIRO & FULTON RAILROAD COMPANY,
(Sig.) By THOMAS ALLEN, *President.*
Attest: WILLIAM R. DONALDSON, *Secretary.*

OFFICE ST. LOUIS & IRON MOUNTAIN CO.,
63 ST. LOUIS, MISSOURI.

I, Stephen D. Barlow, secretary of the St. Louis & Iron Mountain Railroad Company, being corporation formed by a union of St. Louis and Iron Mountain Railroad Company and of its Arkansas Branch with the Cairo, Arkansas & Texas Railroad Company, all of Missouri, do certify that a meeting of the stockholders of said company was duly held at the office of the company, in the city of St. Louis, Mo., on the first day of May, A. D. 1874, at twelve o'clock noon, for the purpose of taking into consideration the foregoing agreement, due notice of the time and place of holding said meeting and of the —— thereof having been given by said company, as provided by law; that at said meeting of stockholders the said agreement was read and considered, and a vote, by ballot, taken for the adoption or rejection of the same according to law, which said ballot results as follows, to wit: One hundred and twenty-four thousand one —— and ninety-two votes, representing 102,192 shares of stock in

said railroad company, were cast for the adoption of said agreement, and that no votes were cast against the adoption of said agreement; that the total amount of stock held by all the stockholders in said company *in* one hundred and forty-three thousand two hundred and fifty shares, each share entitling the stockholder to one
64 vote, and that the total number of votes and shares cast & represented in favor of said agreement by the stockholders of said company exceeded eighty-five hundredths of all the votes and shares of stock, respectively, in said St. Louis and Iron Mountain Railroad Company, and that thereupon said agreement was declared to be duly adopted.

In testimony whereof, I have hereunto set my hand and affixed the corporate seal of said company, the first day of May, A. D. 1874.

[SEAL.] (Signed) STEPHEN D. BARLOW, *Secretary.*

OFFICE CAIRO & FULTON RAILROAD COMPANY,
LITTLE ROCK, ARKANSAS.

I, William R. Donaldson, secretary of the Cairo & Fulton railroad of Arkansas, do hereby certify that a meeting of the stockholders of said company was duly held at the office of the company, in the city of Little Rock, Arkansas, on Monday, the 4th day of March, A. D. 1874, at ten o'clock a. m., for the purpose of taking into consideration the foregoing agreement, due notice of the time and place of holding said meeting, and the object thereof, having be- given by said company, as provided by law; that at said meeting of stockholders the said agreement was read and considered, and vote by ballot taken for the adoption or rejection of the same, according to law, which said ballot resulted as follows: Four hundred and thirty-three thousand two hundred and eighty-one votes,
65 representing 433,281 shares of stock in said railroad company, were cast for the adoption for said agreement, and that no votes were cast against the adoption of said agreement; that the total amount of stock held by all of the stockholders in said company is four hundred and eighty thousand shares, each share entitling the shareholder to one vote; and that the total number of votes and shares cast and represented in favor of said agreement by stockholders of said company exceeded ninety hundredths of all the votes and shares of stock, respectively, in said Cairo & Fulton Railroad Company; and that thereupon said agreement was declared to be duly adopted.

In testimony whereof, I have hereunto set my hand and affixed the corporate seal of said Cairo and Fulton Railroad Co., this the fourth day of May, A. D. eighteen hundred and seventy-four.

[SEAL.] (Signed) WM. R. DONALDSON, *Secretary.*

OFFICE OF THE ST. LOUIS, IRON MOUNTAIN AND
SOUTHERN RAILWAY COMPANY, ST. LOUIS, *May* 4, 1874.

I, Stephen D. Barlow, secretary of said company, do hereby certify the foregoing to be a true copy of—

First. Three resolutions of the board of directors of said St. Louis and Iron Mountain R. R. Company in relation to the union and con-

solidation thereof with the Cairo & Fulton Railroad Company, adopted on the 30th of April, A. D. 1874.

66 2nd. A resolution adopted in stockholders' meeting of said company on the 1st day of May, 1874, approving and adopting the agreement for such union and consolidation.

3rd. Two resolutions of the board of directors of said Cairo & Fulton Railroad Company in relation to the consolidation of said companies, adopted May 4th, 1874.

4th. A resolution adopted at a meeting of the stockholders of said Cairo & Fulton Railroad Company at Little Rock, on Monday, May 4th, 1874, approving of the agreement for such consolidations.

5th. The agreement executed by said two companies in accordance with resolutions of the respective boards of directors of said companies for consolidating said companies.

6th. The certificate of Stephen D. Barlow, secretary of said St. Louis & Iron Mountain Railroad Company, &

7th. The certificate of William R. Donaldson, secretary of said Cairo & Fulton Railroad Company, both endorsed on said agreement in relation to its adoption and approval by the stockholders of said companies, respectively, as follows, as said resolutions, agreements, certificates, remain of record and on file in the office of said St. Louis, Iron Mountain and Southern Railway Company.

In testimony whereof, I have hereunto set my hand and affixed the corporate seal of said St. Louis, Iron Mountain & Southern Railway Company, the 4th day of May, 1874.

67 [L. S.] STEPHEN D. BARLOW, *Secretary.*

OFFICE OF SECRETARY OF STATE,
LITTLE ROCK, ARKANSAS.

I, J. M. Johnson, secretary of State of Arkansas, do hereby certify that the annexed pages contain a true, complete, and full copy of the agreement for the consolidation of the St. Louis & Iron Mountain R. R. Co. with the Cairo and Fulton R. R. Co., under the name of the St. Louis, Iron Mountain and Southern Railway Company, as appears by comparing the same with the certified copy filed this day in my office.

In testimony whereof, I have hereunto set my hand and affixed my official seal at Little Rock, this second day of June, A. D. 1874.

[SEAL.] J. M. JOHNSON,
Secretary of State.
By FRANK STRONG, *Deputy.*

OFFICE OF SECRETARY OF STATE,
CITY OF JEFFERSON, MO.

I, Eugene F. Weigel, secretary of State of the State of Missouri, do hereby certify that the annexed pages contain a true, complete, and full copy of the agreement for the consolidation of the St. Louis and Iron Mountain R. R. Co. with the Cairo & Fulton R. R. Co., under the name of the St. Louis, Iron Mountain and Southern Railway

Company, filed May 16, 1874, as appears by comparing the same with original of said agreement now on file as the law directs in this office.

In testimony whereof, I have hereunto set my hand and affixed my official seal. Done at office this 16th day of May, A. D. 1874.

[SEAL.] EUGENE F. WEIGEL,
Secretary of State,
By CHARLES SCHAEKEL,
Chief Cl'k.

68 (Endorsed as follows, to wit:) Agreement for the consolidation of the St. Louis & Iron Mountain R. R. Co. with the Cairo & Fulton R. R. Co., under the name of the St. Louis & Iron Mountain and Southern Railway Company. Recorded on pages 252, 253, 254, 255, 256, 257, 258, 259, & 260, book R. R. corporations, vol. 2. Filed May 16th, 1874. Eugene F. Weigel, sec'y of State.

To the introduction of each and all of which defendant then and there objected, and the court overruled said objection and permitted the same to be read in evidence; to which defendant then and there excepted.

6th. The plaintiff then filed and agreed statement of the parties as to a part of the facts in said case (as follows):

Agreement of Parties.

In the Stoddard Circuit Court. March Term, A. D. 1878.

ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY *against* HUGH MCGEE, Defendant. } Ejectment.

1st. It is agreed by and between the parties to this suit as follows, to wit: It is agreed that the lands sued for in this suit was a part of the lands granted by act of Congress, dated February 9th, 1853, to aid in building a railroad from a point on the Mississippi river opposite the mouth of the Ohio river, via Little Rock, to Fulton, Arkansas.

2nd. That said lands were sold to the defendant, Hugh McGee, by the Cairo and Fulton Railroad Company, a corporation
69 duly organized under and by virtue of the laws of the State of Missouri, by a deed of conveyance in due form of law, January 3rd, 1859; that said deed was duly recorded in the office of the clerk of the circuit court of Stoddard county, Missouri, January 10th, 1859.

3rd. That defendant has lived and resided upon said land continuously from the date of purchase, using and cultivating the same as his own up to the institution of this suit, and that defendant has paid all the taxes and assessments made against said lands since the date of his purchase.

4th. That said lands are included in the patent issued from the

United States to the plaintiff in this suit, dated January 23rd, A. D. 1877.

HUGH McGEE,
By H. H. BEDFORD, *His Att'y.*
ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY,
By GEORGE N. BROUGHTON, *Its Att'y.*

(Endorsed:) St. L., I. M. & S. R'y Co. *vs.* Hugh McGee. Agreement of parties. Filed M'ch 25, 1878. G. J. Harvey, cl'k.

7th. Plaintiff then filed a map and profile of the railroad, tending to show that the land sued for in this suit is more than forty miles from the point from which said railroad started, (which is hereto attached and made part of this transcript. G. J. Harvey, clerk.) The defendant offered the deed from the trustees of the Cairo &
70 Fulton Railroad Company to the defendant for the land in controversy, dated Jan'y 3rd, 1859 (as follows):

Deed from Trustees of C. & F. R. R. Co. to Hugh McGee, Def't.

No. 12. Know all men by these prosents, that we, John Moore & John Wilson, of the State of Illinois, and Albert G. Waterman, of the State of Pennsylvania, trustees upon certain trusts created and limited by a certain deed made between us and the Cairo & Fulton Railroad Company of Missouri, bearing the date of the 23d day of May, 1857, and a second deed bearing the date of the sixth day of October, 1858, in consideration of the sum of two hundred and $\frac{60}{100}$ dollars to us paid by Hughy Megee, of the State of Missouri (the receipt of which is acknowledged), and in execution of said trust do hereby grant, bargain, and sell unto the said Hughy Megee the lands described as follows, viz: The N. $\frac{1}{2}$ of the N. E. $\frac{1}{4}$ of section 17, township 26 north, of range 11 east, containing, —— to the United States survey, eighty $\frac{60}{100}$ acres, reserving, however, the right of way to the said railroad company one hundred feet wide where the track of said railroad has been or may be laid over said land. To have and to hold to him, the said Hughy Megee, and his heirs and assigns, forever, to his and their own proper use and behoof.

In witness whereof, we have set our hands and seals, this 3rd day January, 1859.

JOHN MOORE, [SEAL.]
JOHN WILSON, [SEAL.]
71 A. G. WATERMAN, [SEAL.]
Trustees.

UNITED STATES OF AMERICA, } ss:
State of Illinois, }

I, J. Spence Waterman, county of Sangamon, a commissioner of the State of Missouri, duly authorized to take acknowledgment of deeds to be recorded in said State, do certify that on this day appeared John Moore, John Wilson, and Albert G. Waterman, trustees, personally known to me to be the same whose names are subscribed

to the foregoing instrument, and acknowledged that they had signed, sealed, and delivered the same as their free act and deed for the uses and purposes therein mentioned.

In witness whereof, I have hereunto set my hand and official seal, this third day of January, in the year A. D. 1859.

J. SPENCE WATERMAN,
Commissioner.

(Endorsed:) No. 12. Deed for trust lands. Trustees Cairo & Fulton R. R. Co. of Mo. to Hughy McGee. County of Stoddard. Filed for record on the 10th day of January, 1859. Recorded book F, pages 207 & 208. Reuben Owen, recorder, by Van W. Hale, deputy.

STATE OF MISSOURI, }
County of Stoddard, } *ss:*

Received for record*ed* 10 day of January, A. D. 1859, and recorded same day in book F, pages 207 & 208, one of the land records of said county of Stoddard.

Witness Reuben P. Owen, clerk of the circuit court of said
72 county of Stoddard, with the seal thereof hereunto affixed, at office in Bloomfield, county and State aforesaid, the date above written.

REUBEN P. OWEN,
Clerk and Recorder ex-officio, by his Deputy, Van W. Hale.

And this was all the testimony offered, and the cause was submitted to the court as a jury, who found for the plaintiff, whereupon the defendant moved for a new trial.

Motion for New Trial.

In the Stoddard Circuit Court, September Term, A. D. 1878.

ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY
v.
HUGH MCGEE, Defendant.

Now at this time comes the defendant by his counsel and files this his motion for a new trial herein, and states that—

1st. That the verdict herein is againt the evidence.

2nd. The verdict is against the issue of the pleadings herein.

3rd. The judgment is against the law arising from the facts in the case.

KITCHEN, BEDFORD *et al., for Def't.*

(Endorsed:) St. L., I. M. & Southern R'way Company *vs.* Hugh McGee. Motion for new trial. Filed Sept. 12th, 1878. G. J. Harvey, clerk, by Bedford.

Which said motion was by the court overruled; to which the defendant then and there excepted, and filed his motion in arrest herein, which said motion was as follows:

Motion in Arrest.

In the Stoddard Circuit Court, September Term, A. D. 1878.

THE ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY
vs.
HUGH MCGEE, Defendant.

73 Defendant comes and by his counsel herein moves the court to arrest the judgment herein for the following reasons, to wit:

1st. The court erred in the admission of the deed from the State of Missouri to McKay, Reed & Co. in evidence without showing title in the State of Missouri.

2nd. The court erred in the admission of the deed from McKay, Reed & Co. to Allen.

3rd. The court erred in finding for the plaintiff, when it has failed to make out a case.

4th. The plaintiff, by his pleadings and evidence, has failed to show itself entitled even *prima facie* to a judgment herein.

5th. The pleadings herein show that since the plaintiff claimed to have purchased the Cairo & Fulton R. R. & appurtenances this defendant has used & occupied said real estate, claiming it as his own exclusive property more than ten years before the institution of this suit.

6th. The finding of the court is against the law and evidence herein.

7th. The facts in the case does not sustain the judgment.

8th. The plaintiff is entitled to no legal inferences in his favor, but must stand upon the case made by the testimony.

9th. The defendant- ten years' occupancy under color of title prior to the institution of this suit was a better title than the one made by plaintiff.

BEDFORD *et al.*, *Def't.*

74 (Endorsed:) St. Louis, Iron Mountain and Southern Railway Company *vs.* Hugh McGee. Motion in arrest. Filed Sept. 13th, 1878. G. J. Harvey, clerk, by Bedford.

The court overruled said motion in arrest, to which said decision of the court in overruling motion of arrest the defendant then and there objected and excepted, and files this his bill of exceptions herein, which he asks may be signed, sealed, and made a part of the record, which is done accordingly this 18th day of September, 1878.

R. P. OWEN, *Judge.* [SEAL.]

Which bill of exceptions is endorsed as follows, to wit: St. L., I. M. & S. R'y Co. *vs.* Hugh McGee. Bill of exceptions. Filed September 18th, 1878. G. J. Harvey, clerk.

STATE OF MISSOURI, } ss:
County of Stoddard, }

I, G. J. Harvey, clerk of the circuit court within and for the county and State aforesaid, do hereby certify the above and foregoing to be a full, true, complete and perfect transcript of the record and proceedings had in said cause in our said court as therein described, as fully as the [same] appears on file and of record in my office.

In testimony whereof, I have hereunto set my hand as clerk, and affixed the seal of said court.

Done at office in Bloomfield, this 28th day of December, A. D. 1878.

[SEAL.]

G. J. HARVEY,
Clerk of the Circuit Court.

75 And afterwards, to wit, at the October term of the supreme court of the State of Missouri, A. D. 1881, and on the 20th day of January, 1882, the following further proceedings were had in said cause, to wit:

ST. L., I. M'T & S. R'Y CO., Resp., *vs.* HUGH MCGEE, App.

Appeal from Stoddard Co. Circuit Court.

Come now the parties by attorneys and submit this cause to the court on briefs.

And afterwards, to wit, at the April term, A. D. 1882, of said court, the following further proceedings were had in said cause, to wit, Monday, May 29, A. D. 1882.

THE ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY,
Respondent,
vs.
HUGH MCGEE, Appellant.

Appeal from Stoddard County Circuit Court.

Now at this day come again the parties aforesaid by their respective attorneys, and the court here being now sufficiently advised of and concerning the premises, do consider and adjudge that the judgment aforesaid, in form aforesaid, by the said Stoddard county circuit court rendered, be reversed, annulled, and for naught held and esteemed, and that the said appellant be restored to all things which he has lost by reason of the said judgment. It is further considered and adjudged by the court that the said appellant re-
76 cover against the said respondent his costs and charges herein expended, and have therefor execution. (Opinion filed.)

Which said opinion is in the words and figures following, to wit:

77 *Opinion of the Court.*

Supreme Court of Mo. April Term, 1882.

ST. LOUIS & I. MT. R. R., Resp., *vs.* HUGH MCGEE, App.

From Stoddard Circuit Court.

This is an action of ejectment. The plaintiff recovered judgment and the defendant has appealed to this court.

The following agreed statement was read at the trial:

1st. It is agreed by and between the parties to this suit as follows, to wit: It is agreed that the lands sued for in this suit was a part of the lands granted by act of Congress, dated February 9, 1853, to aid in building a railroad from a point on the Mississippi river opposite the mouth of the Ohio river, via Little Rock to Fulton, Arkansas.

2d. That said lands were sold to the defendant, Hugh McGee, by the Cairo and Fulton Railroad Company, a corporation duly organized under and by virtue of the laws of the State of Missouri, by a deed of conveyance in due form of law, January 3, 1859; that said deed was duly recorded in the office of the clerk of the circuit court of Stoddard county, Missouri, January 10, 1859.

3d. That defendant has lived and resided upon said land continuously from the date of purchase, using and cultivating the same as his own up to the institution of this suit, and that defendant has paid all the taxes and assessments made against said lands since the date of his purchase.

4th. That said lands are included in the patent issued from the United States to the plaintiff in this suit, dated January 23, A. D. 1877.

The lands granted to the State of Missouri by the act of Congress of February 9th, 1853, were by the 3rd section of the act of the General Assembly of the State of Missouri of February 20, 1855, granted to the Cairo and Fulton Railroad Company.

On the 7th day of January, 1867, the Cairo and Fulton railroad was conveyed by the State to McKay, Reed & Co., under and by virtue of the provisions of the act of February 19th, 1866, Thomas Allen having subsequently acquired their title to this road and its appurtenances, he and his associates, on the 23rd day of April, 1872, incorporated themselves under the act of March 20th, 1866, as "The Cairo, Arkansas and Texas Railroad Company." This com-
78 pany was afterwards consolidated with the "St. Louis, Iron Mt. Railroad Company," under the name of "The St. Louis, I. M. & Southern R'y Company." The Cairo and Fulton railroad was constructed as projected, and on the 23rd day of January, 1877, a patent issued to the plaintiff for the lands in controversy, together with others of the same class. This constitutes the title of the plaintiff.

The lands in controversy are more than forty miles from the starting point of the Cairo and Fulton railroad on the Mississippi river, and it does not appear that a sufficient number of miles of

said road had been constructed at the date of defendant's purchase to authorize a sale of said land under the act of Congress of February 9th, 1853.

The Cairo and Fulton railroad not having been completed within the time prescribed in the 5th section of the act of Congress of February, 1853, Congress passed an act on July 28th, 1866, to revive and extend the provisions of the act of February 9th, 1853, which declared that said act, "with all the provisions therein made, be, and the same is hereby, revived and extended for the term of ten years from the passage of this act; and all the lands therein granted, which reverted to the United States under the provisions of said act, be, and the same are hereby, restored to the same custody, control, and condition, and made subject to the uses and trusts in all respects as they were before and at the time such reversion took effect."

79 This act was not such a legislative declaration of forfeiture as would divest the State of the title granted by the act of February 9th, 1853.

The purpose of the act was not to enforce a forfeiture of the estate granted by the act of 1853, but to waive any right of forfeiture which existed in favor of the United States at the time of the passage of the act of 1866, and to extend the time for the Cairo and Fulton road for the period of ten years from the passage of said last-mentioned act.

As the act of Congress of February 9th, 1853, operated as a grant *in presenti*, and the issuance of a patent was unnecessary to invest the State with the legal title to the lands therein designated, the statute of limitations began to run against the State and the Cairo and Fulton Railroad Company, and all persons claiming title under said grant to the State, from the time the defendant entered into the possession of said land in 1859. The cases of Gibson *vs.* Chouteau, 13 Wall., 92, and Smith *vs.* Madison, 67 Mo., 694, are inapplicable to a case like the present.

Nor was the running of the statute suspended by the enactment of section 7, chapter 190, Gen. Stat., 1865. (Abernathy *vs.* Dennis, 49 Mo., 469; School Dist. *vs.* Georges, 50 Mo., 195; McCartny *vs.* Alderson, 54 Mo., 320; Wickersham *vs.* Woodbeck, 57 Mo., 59; Brush *vs.* Winston, 57 Mo., 62).

80 Upon the agreed statement of facts, therefore, the defendant was entitled to judgment, and the judgment of the circuit court will be reversed.

WARWICK HOUGH.

The other judges concur.

81 On the back of said opinion appear the following endorsements, to wit:

349. St. Louis & I. Mt. R. R. *vs.* Hugh McGee. Opinion of the court, Hough, J. Filed May 29, 1882. Henry W. Ewing, cl'k, by E. B. Ewing, D. C. Reversed.

And afterwards, to wit, at the same term, and [on] the 10th day of June, 1882, an appeal-bond was filed in the above-entitled cause, which is in the words and figures as follows, to wit:

Know all men by these presents, that we, The St. Louis, Iron Mountain and Southern Railway Co. as principal, and ——— as suret—, are held and firmly bound unto Hugh McGee in the full and just sum of five hundred dollars, to be paid to the said Hugh McGee; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals. Dated this ninth day of June, in the year of our Lord one thousand eight hundred and eighty-two.

82 Whereas lately, at the April term, A. D. 1882, of the supreme court of Missouri, in a suit depending in said court between the St. Louis, Iron Mountain and Southern Railway Company, plaintiff, and Hugh McGee, defendant, judgment was rendered against the said The St. Louis, Iron Mountain and Southern Railway Company, and the said St. Louis, Iron Mountain and Southern Railway Company having obtained a writ of error of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said Hugh McGee, citing and admonishing him to be and appear at a Supreme Court of the United States, to be held at Washington, D. C., on the second Monday of October next:

Now, the condition of the above obligation is such that if the said St. Louis, Iron Mountain & Southern R'y Co. shall prosecute said writ to effect, and answer all damages and costs if it fail to make good its plea, then the above obligation to be void; else to remain in full force and virtue.

ST. L., IRON MT. & SO. R'Y CO.,
By H. M. HOXIE, [SEAL.]
Gen'l Manager.
H. M. HOXIE. [SEAL.]
R. J. LECKLAND. [SEAL.]

Sealed and delivered in presence of—
Attest:
[SEAL.] J. D. BARLOW, *Ass't Sec't'y.*

Approved by—
T. A. SHERWOOD, *C. J. S. C., Mo.*

On the back of said bond appears the following endorsements, to wit:

83 No. —. United States circuit court, western district of Missouri. St. L., I. M. & S. Ry. Co. *vs.* Hugh McGee. Appeal bond $500.00. Dated — day of ——, 187–. Filed 10th day of June, 1882. Henry W. Ewing, cl'k, by E. B. Ewing, D. C.

STATE OF MISSOURI, *ss:*

I, Henry W. Ewing, clerk of the supreme court of the State of Missouri, certify that the above and foregoing is a full, true, and

complete transcript of the record and proceedings had in the above-entitled cause as fully as the same remain of record and on file in my office.

In testimony whereof, I hereto set my hand and affix the seal of said court, at office in the city of Jefferson, this 25th day of September, A. D. 1882.

HENRY W. EWING, *Clerk*,
By E. B. EWING, *D. C.*

(Here follows map marked p. 84.)

Endorsed on cover: Missouri sup. court. 322. The St. Louis, Iron Mountain & Southern Railway Company, plaintiff in error, *vs.* Hugh McGee. Filed 7th October, 1882.

115-469

Office Supreme Court U. S.
FILED.
OCT 28 1885
JAMES H. McKENNEY.
CLERK.

Supreme Court of the United States.

OCTOBER TERM, 1885.

THE ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY,
Plaintiff in Error,
vs.
HUGH McGEE.
No. 56.

In Error to the Supreme Court of the State of Missouri.

BRIEF FOR PLAINTIFF IN ERROR.

Attorneys:
A. T. BRITTON,
A. B. BROWNE.

THOS. J. PORTIS,
of Counsel.

WASHINGTON:
GIBSON BROS., PRINTERS AND BOOKBINDERS.
1885.

Supreme Court of the United States.

OCTOBER TERM, 1885.

THE ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY,
PLAINTIFF IN ERROR,
v.
HUGH McGEE.
No. 56.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MISSOURI.

Brief for Plaintiff in Error.

STATEMENT.

This is an action of ejectment brought by plaintiff in error, May 8, 1877, in the Circuit Court of Stoddard County, Missouri, to recover from the defendant, McGee, eighty acres of land described in the complaint with damages and rent for its retention and use.

Rec., 3.

Original answer was filed but does not appear in the record. Replication thereto was filed March 14, 1878.

Rec., 5.

March 22, 1878, amended answer was filed.
Rec., 4–5.

March 25, 1878, the cause was submitted upon the pleadings and testimony introduced, trial by jury being expressly waived.
Rec., 6.

Sept. 9, 1878, judgment was rendered for plaintiff, awarding possession of the land and one cent damages.
Rec., 6–7.

Motions for new trial and in arrest of judgment being successively overruled and exception noted.
Rec., 8–9.

Appeal was taken and allowed to the Supreme Court of the State.
Rec., 9.

May 29, 1882, the Supreme Court by its judgment directed—

"that the judgment aforesaid, in form aforesaid, by the "said Stoddard County Circuit Court rendered, be reversed, "annulled, and for naught held and esteemed, and that the "said appellant be restored to all things which he has "lost by reason of the said judgment. It is further con- "sidered and adjudged by the Court that the said appel- "lant recover against the said respondent his costs and "charges herein expended, and have therefor execution."
Rec., 40.

To reverse this judgment the present writ of error is brought.

The land in controversy is part of an odd section within the limits of the grants made by Acts of Congress approv-

ed Feb'y 9, 1853, (10 Stats., 155,) and July 28, 1866, (14 Stats., 338,) to the States of Arkansas and Missouri, to aid in the construction "of a railroad from a point on the " Mississippi River, opposite the mouth of the Ohio, in " the state of Missouri, via Little Rock, to the Texas " boundary line near Fulton, in Arkansas."

The title of plaintiff in error as shown by the Bill of Exceptions presented below (Rec. 10) arises thus.

By act of Feb'y 20, 1855, the State of Missouri conferred the Federal grant of 1853 for the construction of so much of the road as lay therein upon the Cairo and Fulton R.R. Co., of Missouri. That Company having suffered default, the State by act of Feb'y 19, 1866, provided " for the sale of certain railroads and property by " the Governor to foreclose the State's lien therein, and to " secure an early completion of the Southwest Branch " Pacific, the Platt County, the St. Louis and Iron Moun- " tain, and the Cairo and Fulton Railroads of Missouri." At such sale the State became the purchaser, and the road and franchises were again offered for sale by her.

At such second sale, McKay, Reed & Co., became the purchasers, and to them conveyance was made by the Governor pursuant to the recited authority of said Statute on Jan'y 7, 1867, of—

" the said Cairo and Fulton Railroad of Missouri, with all " the franchise, privileges, rights, title and interest apper- " taining to said road, and all roads, road-bed, rolling stock, " machine shops and all other property, both real and per- " sonal, of every description, belonging or in any wise ap- " pertaining thereto."

Rec. 11.

Jan'y 12, 1867, McKay, Reed & Co., made conveyance

of the same property by same form of description to Thomas Allen.

Rec., 14.

April 23, 1872, Thomas Allen and others duly incorporated the Cairo, Arkansas & Texas Railroad Company, for the purpose *inter alia* of completing the line of road projected by the Cairo & Fulton R.R. Co. of Missouri, and to take possession of the road and property.

Rec., 19.

By agreement dated March 11, 1874, the St. Louis Iron Mountain Railroad Company, an existing corporation, and the Cairo, Arkansas & Texas Railroad Company, became consolidated under the name of the St. Louis and Iron Mountain Railroad Company.

Rec., 22.

By agreement dated April 30, 1874, the St. Louis and Iron Mountain Railroad Company, and the Cairo & Fulton Railroad Company of Arkansas, became consolidated under the name of the St. Louis, Iron Mountain & Southern Railway Company.

Rec., 28.

The time limited by the Federal act of Feb'y 9, 1853, for the construction of said road (ten years) having expired in 1863, and no road having been built thereunder, Congress on July 28, 1866, passed an act (14 *Stats.*, 338,) "to revive and extend" the provisions of the act of 1853. The road was completed in Missouri by the St. Louis, Iron Mountain & Southern Rw. Co., to whom patent issued from the United States covering the land here in question, Jan'y 23, 1877.

Rec., 10.

The title of defendant in error is shown by an agreed statement of facts, thus:

"1st. It is agreed by and between the parties to this suit "as follows, to wit: It is agreed that the land sued for "in this suit was a part of the land granted by act of "Congress dated Feb'y 9, 1853, to aid in building a railroad "from a point on the Mississippi river, opposite the Ohio "river *via* Little Rock, to Fulton, Arkansas.

"2d. That said lands were sold to the defendant, Hugh "Mc Gee, by the Cairo and Fulton Railroad Company, a "corporation duly organized under and by virtue of the "laws of the State of Missouri by a deed of conveyance in "due form of law January 3, 1859; that said deed was duly "recorded in the office of the Clerk of the Circuit Court of "Stoddard County, Missouri, January 10, 1859.

"3d. That defendant has lived and resided upon said "land continuously from the date of purchase, using and "cultivating the same as his own up to the institution of "this suit, and that defendant has paid all the taxes and "assessments made against said land since the date of "his purchase.

"4th. That said lands are included in the patent issued "from the United States to the plaintiff in this suit, dated "January 23, A. D. 1877."

Rec., 36.

The deed from said company to defendant appears at large in the record.

Rec., 37.

This title was set up by special plea in defendant's amended answer. The plea of the statute of limitations was also made therein.

Rec., 4.

The contention of the plaintiff in error was and is:

1st. That the grant of 1853 expired without construction of the road coterminous to this land.

2d. That the act of 1866 was in legal effect a resumption of the former grant of 1853, and a grant *de novo* from its date to the State upon new and additional conditions.

3d. That the conveyance from the original Cairo & Fulton Company to defendant in 1859 being subject to the right of reversion in the United States, and such right having been exercised in 1866, the defendant's title was thereby defeated.

4th. That plaintiff took by a new title both under its purchase from the State and under the grant of 1866, and the patent issued pursuant thereto.

5th. That the statute of limitations is not applicable.

ASSIGNMENT OF ERRORS.

The Court below erred.

1. In holding that the act of Congress approved July 28, 1866, "was not such a legislative declaration of forfeit-" ure as would divest the State of the title granted by the "act Feb'y 9, 1853."

2. In holding that "the statute of limitations began to " run against the State and the Cairo and Fulton Railroad " Company, and all persons claiming title under said grant " to the State, from the time the defendant entered into " the possession of said land in 1859."

3d. In giving judgment for defendant and not for plaintiff.

ARGUMENT.

The proper presentation of the case involves discussion:

1. Of the federal grant of 1853 and its conditions.
2. The action of the State thereunder.
3. The effect of the Federal act of 1866.

Should the contention of the plaintiff in error be main-

tained thereon, then and then only will it be necessary to consider.

4. The statute of limitations.

In other words, if the defendant in error now holds the existing railroad title, resort to the statute of limitations is unnecessary.

I.

ACT OF FEBRUARY 9, 1853.

This was a grant *in presenti*. It was made to the State alone, no resulting beneficiary being named. It gave "every alternate section of land designated by even sec- "tions for six sections in width on each side of said road "and branches," which at date of definite location were found not sold nor pre-empted. It gave indemnity for lands thus found appropriated, and fixed the limit of fifteen miles wherein to select same.

The habendum clause thereof restricted the grant "to " and for the use and purpose aforesaid." The expressed conditions affecting its enjoyment and use were:

1st, (Sec. 2.) "That the lands hereby granted shall be "applied in the construction of said road, and shall be dis- "posed of only as the work progresses, and shall be ap- "plied to no other purpose whatsoever."

2d, (Sec. 4.) "That the said lands hereby granted to the "said States shall be subject to the disposal of the legis- "latures thereof for the purposes aforesaid and no other,"

3d, (Sec. 4.) "and the said railroad and branches shall "be and remain a public highway for the use of the Gov- "ernment of the United States, free from toll or other "charge, upon the transportation of any property or troops "of the United States."

"4th, (Sec 5.) "That the lands hereby granted to said "States shall be disposed of by said States only in the

" manner following, that is to say, that a quantity of land " not exceeding one hundred and twenty sections, and in- " cluded within a continuous length of twenty miles of said " road, may be sold; and when the Governors of said State " or States shall certify to the Secretary of the Interior " that twenty continuous miles of said road is completed, " then another like quantity of land hereby granted may " be sold; and so from time to time until said road is " completed."

5th, (Sec. 5.) " and if said road is not completed within " ten years, no further sales shall be made, and the land " unsold shall revert to the United States."

6th, (Sec. 6.) "That the United States mail shall be at " all times transported on the said road and branches " under the direction of the Post Office Department, at " such price as Congress may by law direct."

STATE ACTION.

Feb'y 20, 1855, the General Assembly of the State of Missouri passed an act (Session Laws 18th General Assembly, 1855, p. 314,) as expressed by its title—

"To confirm the incorporation of the Cairo and Fulton " Railroad Company of Missouri, and to apply to the " construction of the same the grant of lands made to the " State of Missouri by the Congress of the United States, " and to accept said grant of land."

Secs. 1 and 2 thereof confirm the incorporation of said Company in accordance with its articles filed with the Secretary of State, January 12, 1854.

Sec. 3 confers the Congressional grant on the Company—

" for the uses and purposes and subject to the condition, " reversion, and provisions set forth and contained in said " act of Congress and this act."

Sec. 4 regulates the matter of location.

Sec. 5 provides :

"For the purpose of raising funds from time to time for " the construction of the said railroad, the said company " may sell the said lands, in the manner provided for by " said act of Congress, and may issue their bonds in such " sums as they may deem proper, at rates of interest not " exceeding seven per cent. per annum, payable semi-an- " nually, and the principal of said bonds payable at such " time and place as they may designate ; and may secure " the payment of said bonds by mortgage of said lands, or " any part thereof, to be executed by said company, and " may make the said bonds convertible into land or stock " of the company within such periods as they may pre- " scribe, *provided*, that the faith of the State is in no man- " ner pledged for the redemption of said bonds, or any " part thereof, *and provided further*, that nothing in this " act contained shall be construed to authorize said com- " pany, to sell, dispose of, or apply the said lands or the " proceeds thereof in any other manner or to any other " purpose than as required and limited by the said act of " Congress."

Sec. 7 provides that actual occupants on June 10, 1854, should be preferred purchasers in quantity not exceeding one quarter section—

" At not exceeding $2.50 per acre, subject to the re- " version in said act provided for."

As a matter of law it is manifest that the conditions expressed in the Federal grant could not be waived nor modified by the State in bestowing the grant upon its grantee. As a matter of fact, as appears from foregoing, they were carried therein by express recital.

As appears from the map accompanying the record and as found by the Court below—

"The lands in controversy are more than forty miles "from the starting point of the Cairo & Fulton Railroad "on the Mississippi River, and it does not appear that a "sufficient number of miles of said road had been con- "structed at the date of defendant's purchase to authorize "a sale of said land under the act of Congress of Febru- "ary 9, 1853."

Rec., 41.

Nor does it appear that the State or Company ever exercised the privilege given by sec. 5 of the grant of selling one hundred and twenty sections in advance of construction, nor that the privilege, if exercised, included this land.

Nor does it appear that the Cairo & Fulton Railroad of Missouri, or any other corporation in its stead, constructed that portion of the road coterminous to this land prior to the expiration of the period fixed therein for completion of said road, Feb'y 9, 1863, nor prior to July 28, 1866, at which date Congress passed an act "to revive and extend" the act of 1853, (14 Stats., p. 338.)

At that date, therefore, (July 28, 1866,) and so far as shown by this record, the conditions of the grant of 1853 were wholly unfulfilled. No road had been constructed, no portion of the grant earned. At all times the provision in sec. 3 thereof that the land "shall be disposed of only "as the work progresses," and the express limitation in sec. 5, upon the mode and time of disposal were in full force, binding the State and its grantee, and operating as notice to the world of the inability of the State or Company to make an indefeasible title until the condition subsequent, construction, had been performed.

As between the State and its grantee, the Cairo & Fulton R.R. Co., it may properly be urged that the proceeding culminating in the purchase of the railroad interest by

the State, and its re-sale by the State, was in legal result a forfeiture of the grant in the hands of the original Company and its bestowment upon new parties. Beyond question the State acted fully within its powers. No less as a creditor than as the sovereign from whom the grant had passed to the Cairo & Fulton R.R., of Missouri, it undeniably exercised the measure of power reserved in the State law of 1855, which bestowed the grant upon that Company.

The conditions imposed by the Federal grant ran with the land. They were repeated in express terms in the act bestowing the grant upon the Company. *Inter alia*, the condition was that the road should be completed within ten years. It had not been so completed. Hence the State law of 1866, providing for the sale of the road, its property, and franchises, was as expressed by its title " to " foreclose the State's lien thereon and to secure an early " completion of the road."

At such sale the State became the purchaser. Thereafter, and by new and distinct offering, other parties acquired the State's title to the road, franchises and property including the grant of lands. Manifestly the new grantee stood in no relation of privity with the Cairo & Fulton Co. It held title by and through the State alone and based upon its exercise of the reserved power of reversion expressed in the act of 1855.

The exercise of such reversionary power by the State was not limited by technical forms of procedure. As between the State and its grantee, the State occupied the same relation as existed under the grant between the United States and the State. Acting within the scope of its reserved powers thereunder, either the United States or the State might resume the grant for breach of the conditions affixed thereto. As between the

United States and the State those conditions were declared by the act making the grant. As between the State and its grantee the same conditions were present by force of law and the State might impose such additional conditions as the pleasure of its legislature should require. For breach of any or all of such conditions the State might exercise the power of forfeiture in such manner as was deemed most effective and appropriate to secure that end.

This Court has so ruled.

Thus in *United States* v. *Repentigny* (5 Wall., 268) it was held:

"The mode of asserting or of assuming the forfeited grant
" is subject to the legislative authority of the Government.
" It may be after judicial investigation, or by taking pos-
" session directly under the authority of the Government,
" without these preliminary proceedings."

In *Schulenberg* v. *Harriman* (21 *Wall.*, 63) it was held:

"In what manner the reserved right of the grantor for
" breach of the condition must be asserted so as to restore
" the estate depends upon the character of the grant. If
" it be a private grant, that right must be asserted by
" entry, or its equivalent. If the grant be a public one,
" it must be asserted by judicial proceedings authorized
" by law, the equivalent of an inquest of office at common
" law, finding the fact of forfeiture and adjudging the
" restoration of the estate on that ground, or there must
" be some legislative assertion of ownership of the pro-
" perty for breach of the condition, such as an act
" directing the possession and appropriation of the
" property, or that it be offered for sale or settlement."

In *Farnsworth* et al. v. *Railroad Co.* (92 U. S., 66) it was held:

"A forfeiture by the State of an interest in lands and con-

" nected franchises, granted for the construction of a pub-
" lic work, may be declared for non-compliance with the
" conditions annexed to their grant, or to their possession
" when the forfeiture is provided by statute, without judicial
" proceedings to ascertain and determine the failure of the
" grantee to perform the conditions. Such mode of as-
" certainment and determination, that is, by judicial pro-
" ceedings, is attended with many conveniences and ad-
" vantages over any other mode, as it establishes as mat-
" ter of record, importing verity against the grantee, the
" facts upon which the forfeiture depends, and thus avoids
" uncertainty in titles, and consequent litigation. But that
" mode is not essential to the divestiture of the interest
" where the grant is for the accomplishment of an object
" in which the public is concerned, and is made by a law
" which expressly provides for the forfeiture when that ob-
" ject is not accomplished. Where land and franchises are
" thus held, any public assertion by legislative act of the
" ownership of the State, after default of the grantee—
" such as an act resuming control of them and appropria-
" ting them to particular uses or granting them to others to
" carry out the original object—will be equally effectual and
" operative. It was so decided in *United States* v. *Repen-*
" *tigny*, (5 Wall., 211,) and in *Schulenberg* v. *Harriman*, (21
" Wall., 44,) with respect to real property held upon con-
" ditions subsequent."

And the Court forcibly illustrates the necessity for the exercise of such summary power by referring to the condition of time contained in the Federal grant, and the danger of delay by judicial proceeding to declare the forfeiture in permitting the Federal Goverment to resume the grant for breach thereof.

In this case the State had resumed control by an act conferring the franchise and grant upon a new corporation. Such exercise of power was upheld. In the case at bar the State resumed control by a sale of the franchise

and grant. The one is the full equivalent of the other and stands upon the same legal plane.

But should it be held that the sale by the State was not the equivalent of a direct forfeiture, but the act of a creditor only, operating to transfer title to new parties, we submit that in such view the title of defendant must fail.

In *Wilson* v. *Boyce*, (92 U. S., 320,) this precise question arose concerning this grant. From the report thereof it appears that by acts of Dec. 11, 1855, and March 3, 1857, the State Legislature had authorized the issue of State bonds to the Company aggregating $650,000, and provided that such bonds should become a mortgage and first lien upon the road and its property.

Thereafter, and on May 23, 1857, the Company conveyed its land grant to certain trustees to be sold to raise money for the construction of the road. These trustees in 1859 conveyed the land there in question to one Hamilton, from whom Wilson, the plaintiff, derived title.

Boyce claimed title under the sale by the State in 1866, as recited above.

The Court held:

"The title of the plaintiff was and is good so far as "the Railroad Company is concerned. That Company "held the title in fee, subject only to the statutory mort- "gage. He took title subject to that mortgage, which "was a lien of a date prior to his title. That prior "mortgage became forfeited by the non-payment by the "Company of the moneys due; the lands therein de- "scribed were sold by reason of such forfeiture, and were "purchased by the grantor of the defendant's landlord. "The foreclosure of the prior statutory mortgage has de- "stroyed the plaintiff's title."

The defendant here purchased in 1859 from the same

trustees operating under the same trust-deed, as appears from the recitals of his deed in the record.

Rec., 37.

The plaintiff here is claiming title under the sale by the State in 1866—precisely the title held by Boyce. That title was upheld in the case cited. It must therefore be given the same effect here.

ACT OF JULY 28, 1866.

The State act providing for the sale of the Cairo & Fulton Railroad of Missouri was passed February 19, 1866. (Session Laws 1866, p. 107.) The sale thereunder was not made until October 1, 1866, whereat the State became the purchaser. The sale by the State in turn to McKay *et al.*, did not occur until some time between Oct. 1, 1866, and the date of the deed from the Governor to McKay, *et al.*, January 7, 1867. These facts appear from the recitals of that deed.

Rec., 11.

Meanwhile the United States had intervened, and Congress had passed the act of 1866. (14 Stats., p. 338.)

At that date the period limited for the construction of the road had been exceeded by more than three years. The road had not been constructed. The power of Congress to declare a forfeiture was undoubted. More than that it was then the understanding of Congress that the grant had expired, and new legislation was requisite to revive it and reinvest the State with title.

That understanding is apparent from the language of the act. Section 1 thereof provides that the act of 1853—

" with all the provisions therein made, be, and the same

" is hereby, revived and extended for the term of ten " years from the passage of this act; *and all the lands* " *therein granted which reverted to the United States under* " *the provisions of said act be, and the same are hereby,* " *restored to the same custody, control, and condition, and* " *made subject to the uses and trusts in all respects as they* " *were before and at the time such reversion took effect.*"

In other words, Congress understood the reversion provided for in the act of 1853 as self-executing on expiration of the time limited therein for construction and default then existing. That was the common understanding then prevailing. It was not until the October term, 1874, of this Court, in *Schulenberg* v. *Harriman, supra*, that a contrary rule was declared. Hence we say that the *intention* of Congress was to make a new grant. The form of expression used in declaring that intention is unimportant. It might have renewed the grant and yet named a new grantee—as for instance the Railroad Company. It did insert new conditions. Thus, in sec. 1, it was provided—

" That all mineral lands within the limits of this grant " and the grant made in section two of this act are hereby " reserved to the United States."

There was no such reservation in the original grant of 1853.

It also provided in the same section—

" That all property and troops of the United States " shall at all times be transported over said railroad and " branches at the cost, charge, and expense of the com- " pany or corporation owning or operating said road and " branches respectively, when so required by the Govern- " ment of the United States."

The condition in the original grant was simply that the—

" said railroad and branches shall be and remain a public " highway for the use of the Government of the United " States, free from toll or other charge, upon the transpor- " tation of any property or troops of the United States."

This latter condition has been declared by this Court to give the United States the free use of the road-bed only.

A. T. & S. F. R.R. Co. v. *U. S.*, 93 U. S., p. 442.

Whilst the condition added by the act of 1866 required the Company to transport Government property at its own cost.

Section 2 of the act of 1866 changed the mode of passing title by requiring patents to be issued as each section of ten miles should be completed. The same section provided that upon failure to construct the roads in time and manner specified " all the lands granted or the grant of " which is revived or extended by this Act, and which at " the time shall be unpatented to or for the benefit of the " road or Company making or suffering such failure, shall " revert to the United States."

Section 3 provided—

"*That all the lands mentioned in this act and hereby* " *granted* are hereby reserved from entry, pre-emption or " appropriation to any other purpose than herein contem- " plated for the said term of ten years from the passage " of this act."

And in the same section Congress steps in between the State and its grantee, under the grant of 1853, and provides—

" That all lands heretofore given to the State of Mis- " souri for the construction of the Cairo & Fulton Rail-

" road, or for the use of said road lying in the State of " Missouri, and all lands proposed to be granted by this " Act for the use or in aid of the road herein named and " lying in said State of Missouri, shall be granted and " patented to the said State whenever the road shall " be completed through said State, which lands may be " held by said State and used toward paying the State " the amount of bonds heretofore issued by it to aid said " Company, and all interest accrued or to accrue thereon."

Bearing in mind the judicial declaration of the modes whereby a legislative forfeiture may be declared, we submit that both in intention and expression the act of 1866 declared such forfeiture. It matters not that formal words were omitted or included therein. It was an exercise of undoubted power. It was dealing *de novo* with the subject matter granted. It imposed new conditions. It was the *assumption* of the power to act and the exercise of such power which carried all the resulting consequences of a forfeiture declared in terms. It assumed a forfeiture existing and acted upon that assumption. It took up a defunct grant and gave it new life, but changed the organism by which it should exist and be made complete.

The exercise of such power was equivalent to a re-entry. In the language of this Court it was " an act resuming con- " trol of them," and was " effectual and operative " as a " pub- " lic assertion by legislative act of the ownership of the " State."

Farnsworth v. *Railroad Co.*, *supra.*

Thus it eliminated from the grant of 1866 what was covered by the grant of 1853, viz., mineral lands. It imposed new conditions affecting both the land and the rights and obligations of the grantee. It dealt with the subject matter throughout as if Congress had absolute power thereover, an assumption which could not be ad-

mitted nor indulged if the grant of 1853 stood unaffected thereby.

These considerations are unaffected by the rule against indulging forfeitures which obtains in Equity:

"This, as a general rule, is true when applied to cases "of contract and the forfeiture relates to a matter admit- "ting of compensation or restoration, but there can be "no leaning of the Court against a forfeiture which is "intended to secure the construction of a work in which "the public is interested, where compensation cannot be "made for the default of the party, nor where the forfeit- "ure is imposed by positive law."

Farnsworth v. *Railroad Co.*, *supra*.

DEFENDANT'S TITLE.

Assuming a forfeiture between the State and its grantee, what effect has it upon the title of defendant acquired from such grantee in 1859?

We contend the forfeiture was clearly destructive of such title. It does not appear that the road was constructed coterminous to this land at date of defendant's purchase in 1859. It had not been so constructed when the State resumed the grant in 1866.

At all times the condition in the Federal grant—repeated in the State act conferring it upon the defendant's grantor—forbade a sale of this land thereunder.

The defendant bought with knowledge and was bound by the express provision of the law. Had his grantor constructed the road, and thereby earned the land, undoubtedly his title would have been made complete. It did not do so. He bought subject to the right of reversion in the State. That right was exercised. Upon its exercise his title fell.

There is no privity of estate between the defendant and the State. The conveyance to defendant was absolutely inhibited by the State law. His grantor could not lawfully convey. Its conveyance carried with it the condition contained in the law. Upon breach of that condition and resumption of the grant therefor, the title of the railroad company fell. The defendant's title could rise no higher than its source and fell with it.

Such is the ruling of this Court in *Farnsworth* v. *Railroad Co., supra.* There the defaulting Company had executed a trust deed to secure certain bonds. The State, under its reserved power, resumed the franchise and grant and conferred same upon a new corporation. The suit was brought to enforce the trust deed given by the defaulting Company. The Court affirmed the decree below and dismissed the bill upon the ground that the act of forfeiture destroyed the effect of such trust deed, which when given stood subject to the exercise of such reserved power upon breach of the condition, and " the beneficiaries " under that instrument took whatever security it afforded " in subordination to the rights of the State to enforce " the forfeiture provided."

This doctrine is clearly applicable here.

But assuming a forfeiture by the act of 1866, as between the United States and the State, and no room for argument remains. Certainly the Federal grantor was unaffected by acts *inter partes.* If the act of 1866 had simply resumed the grant the defendant's title would have fallen without hope. Can it stand on any stronger ground because the act of 1866 reinvested the State with the title, and a new corporation having no privity with the defendant's grantor built the road and earned the lands? Assuredly not.

If foregoing contention be upheld the plea of the statute of limitations remains to be considered.

Such plea was sustained by the Court below upon the distinct ground that no forfeiture of the grant of 1853 had occurred; that the grant *was in presenti*, "and a patent "was unnecessary to invest the State with the legal title "to the lands therein designated."

The cases of *Gibson* v. *Chouteau*, (13 *Wall.*, 92,) and Smith *v.* Madison, (67 *Mo.*, 694,) cited by plaintiff, were declared inapplicable, and the running of the statute against the State declared upon the authority of certain other decisions of that Court.

But the error of the learned Court arose in confounding the title held by the State under the act of 1853 with that degree of title held by the State in the cases thus cited.

In all of such cases it appears that the State held an indefeasible title.

Thus in *Abernathy* v. *Dennis*, (49 Mo., 468,) the State title rested upon the swamp land grant, which this Court has many times declared vested an absolute title in the State from its date.

In *School District* v. *Georges*, (50 Mo., 19,) the land had been "set apart and donated to it for school purposes."

In *Wickersham* v. *Woodbeck*, (57 Mo., 59,) the plaintiff claimed under a patent from the State covering part of the land granted to her for internal improvements under the Federal law of Sept. 14, 1841.

In *Burch* v. *Winston*, et al., (57 Mo., 62) the land involved was—

"a part of the land donated by the United States to the "State of Missouri, for a permanent seat of government."

In all of these cases the State title was absolute. No conditions or limitations affected it. In all such cases that Court might well declare the State title subject to the bar of the statute.

But the grant of 1853, whilst conveying a title *in presenti*, coupled thereto a condition running with the land. Neither the State nor her grantee could dispense with that condition, nor divest the land thereof by conveyance to a stranger. The period of limitation in Missouri is ten years. Defendant purchased in 1859. The limitation of time in the grant expired in 1863. The grant had then expired. In 1866 the United States, by appropriate legislation, resumed control of the grant and re-invested same in the State upon new conditions. The State likewise resumed the grant, and conferred it upon other parties. The exercise of these powers, existing at date of defendant's purchase and entering therein by force of law, destroyed the effect of the statute.

It was the exercise of such power and not the manner thereof which produced this result. Had the grant been renewed to the State for another and distinct purpose, such as the construction of a canal or the improvement of navigation, the title of the defendant would have certainly fallen, and the plea of the statute would avail nothing. So, also, had Congress declared that all mineral lands which, by the express terms of the act of 1866 were excluded from the operation of this grant, should be granted to the State for specific purposes and it was found that *this* land was mineral, could the defendant here meet the State's patentee under such donation with a plea of the statute? Assuredly not.

The logic of these illustrations applies with equal force upon the facts presented by this record. If the contention *contra* were sound the original grantee under the State

could have sold every acre of the grant whilst earning none. Upon attempted exercise of the power of forfeiture the State would have found the statute of limitations an insuperable bar to recovery.

However effective the argument that the Statute does run against the State it is certain that it can have no application as against the United States.

Thus had the act of 1866 simply declared a forfeiture and resumed the grant, the plea of the statute would have been unavailing against a subsequent grantee from the Government. Both the grants of 1853 and 1866 however, whilst *in presenti*, retained the reversion in the grantor. The necessity for the exercise of the reserved power of forfeiture, and its exercise or non exercise in fact, were all within the protection of the compact between the State and the United States whereby it was agreed—

" That the legislature of said State shall never interfere " with the primary disposal of the soil by the United " States." (3 Stats., 545, Sec. 4.)

The grant of 1866 herein declared in terms that the lands " shall be disposed of only as follows." And thereupon provided that upon completion of each section of ten miles of road, patents should issue for the lands earned coterminous thereto.

At date of such construction and acceptance thereof by the Secretary of Interior, the *right* to patent as against the United States became complete. Then, and then only, the United States parted with its reserved power under the grant. It does not appear when the road opposite this land was completed. It does appear that patent issued therefor January 23, 1877. That date must in the absence of other proof be taken as the date when the right of the grantee became complete. From that date only did the statute begin to run.

Such is the express holding of this Court in *Gibson* v. *Chouteau*, *supra*, wherein it is said:

"But neither in a seperate suit in a Federal Court, nor "in an answer to an action of ejectment in a State Court, "can the mere occupation of the demanded premises by "plaintiffs or defendants, for the period prescribed by the "statute of limitations of the State, be held to constitute "a sufficient equity in their favor to control the legal title "subsequently conveyed to others by the patent of the "United States, without trenching upon the power of Con-"gress in the disposition of the public lands. That power "cannot be defeated or obstructed by any occupation of "the premises before the issue of the patent, under State "legislation, in whatever form or tribunal such occupation "be asserted."

To reach a contrary result the Court below evidently misconstrued the status of the parties. McGee, the defendant, claiming title under the grant of 1853, is wholly different from McGee, the defendant, claiming title under the statute of limitations. The former party insists that the State and her grantees are estopped to deny his title. The latter insists that without such color of title, the action is barred because he has enjoyed exclusive adverse possession for ten years. Such pleas are separate and independent. They should not be confounded because urged by the same defendant. They stand upon wholly different ground, as much so as if there were two defendants, one pleading title and the other the Statute.

We submit the judgment below should be reversed.

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